

**CITY OF NEWPORT BEACH
PLANNING COMMISSION AGENDA
CITY COUNCIL CHAMBERS – 100 CIVIC CENTER DRIVE**

**THURSDAY, SEPTEMBER 19, 2013
REGULAR MEETING – 6:30 p.m.**

**BRADLEY HILLGREN
Chair**

**LARRY TUCKER
Vice Chair**

**KORY KRAMER
Secretary**

FRED AMERI

TIM BROWN

RAYMOND LAWLER

JAY MYERS

Planning Commissioners are citizens of Newport Beach who volunteer to serve on the Planning Commission. They were appointed by the City Council by majority vote for 4-year terms. At the table in front are City staff members who are here to advise the Commission during the meeting. They are:

KIMBERLY BRANDT, Community Development Director

**BRENDA WISNESKI, Deputy Community
Development Director**

LEONIE MULVIHILL, Assistant City Attorney

TONY BRINE, City Traffic Engineer

MARLENE BURNS, Administrative Assistant

NOTICE TO THE PUBLIC

Regular meetings of the Planning Commission are held on the Thursdays preceding second and fourth Tuesdays of each month at 6:30 p.m. The agendas, minutes, and staff reports are available on the City's web site at: <http://www.newportbeachca.gov> and for public inspection in the Community Development Department, Planning Division located at 100 Civic Center Drive, during normal business hours. If you have any questions or require copies of any of the staff reports or other documentation, please contact the Community Development Department, Planning Division staff at (949) 644-3200.

This Commission is subject to the Ralph M. Brown Act. Among other things, the Brown Act requires that the Commission's agenda be posted at least 72 hours in advance of each meeting and that the public be allowed to comment on agenda items before the Commission and items not on the agenda but are within the subject matter jurisdiction of the Commission. The Commission may limit public comments to a reasonable amount of time, generally three (3) minutes per person. All testimony given before the Planning Commission is recorded.

It is the intention of the City of Newport Beach to comply with the Americans with Disabilities Act (ADA) in all respects. If, as an attendee or a participant of this meeting, you will need special assistance beyond what is normally provided, the City of Newport Beach will attempt to accommodate you in every reasonable manner. Please contact Leilani Brown, City Clerk, at least 72 hours prior to the meeting to inform us of your particular needs and to determine if accommodation is feasible (949-644-3005 or lbrown@newportbeachca.gov).

APPEAL PERIOD: Use Permit, Variance, Site Plan Review, and Modification Permit applications do not become effective until 14 days following the date of approval, during which time an appeal may be filed with the City Clerk in accordance with the provisions of the Newport Beach Municipal Code. Tentative Tract Map, Tentative Parcel Map, Lot Merger, and Lot Line Adjustment applications do not become effective until 10 days following the date of approval, during which time an appeal may be filed with the City Clerk in accordance with the provisions of the Newport Beach Municipal Code. General Plan and Zoning Amendments are automatically forwarded to the City Council for final action.

**NEWPORT BEACH PLANNING COMMISSION AGENDA
CITY COUNCIL CHAMBERS – 100 CIVIC CENTER DRIVE
THURSDAY, SEPTEMBER 19, 2013
REGULAR MEETING – 6:30 p.m.**

I. CALL TO ORDER

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL

IV. PUBLIC COMMENTS

Public comments are invited on non-agenda items generally considered to be within the subject matter jurisdiction of the Planning Commission. Speakers must limit comments to three (3) minutes. Before speaking, please state your name for the record and print your name on the blue forms provided at the podium.

V. REQUEST FOR CONTINUANCES

VI. CONSENT ITEMS

ITEM NO. 1 MINUTES OF SEPTEMBER 5, 2013

Recommended Action: Approve and file

VII. PUBLIC HEARING ITEMS

Speakers must limit comments to three (3) minutes on all items. Before speaking, please state your name for the record and print your name on the blue forms provided at the podium.

If in the future, you wish to challenge in court any of the matters on this agenda for which a public hearing is to be conducted, you may be limited to raising only those issues, which you (or someone else) raised orally at the public hearing or in written correspondence received by the City at or before the hearing.

ITEM NO. 2 216 CRYSTAL VARIANCE (PA2013-118)

Site Location: 216 Crystal Avenue

Summary:

A request for a variance to allow the following improvements to an existing nonconforming duplex: 1) a second story addition which would exceed the maximum allowed floor area; 2) an addition greater than 10 percent of the existing square footage without providing the required number of parking spaces (two garage spaces per unit); and 3) encroachment into the 4-foot side yard setback along E. Bay Front Alley.

CEQA Compliance:

The project categorically exempt under Section 15301 of the California Environmental Quality Act (CEQA) Guidelines - Class 1 (Existing Facilities) of the implementing Guidelines of the California Environmental Quality Act as the project is an addition to an existing structure and is located on a developed site with no environmentally significant resources present.

Recommended Action:

1. Conduct a public hearing; and
2. Adopt Resolution No. ____ approving Variance No. VA2013-005.

VIII. STUDY SESSION

ITEM NO. 3 WIRELESS TELECOMMUNICATIONS FACILITIES ORDINANCE (PA2012-057)

Site Location: City-wide

Summary:

An amendment to the Newport Beach Municipal Code ("NBMC") to update regulations regarding wireless telecommunication facilities ("Telecom Facilities"). Regulations currently contained in Chapter 15.70 would be updated and relocated to Title 20 (Planning and Zoning) and Chapter 15.70 would be rescinded in its entirety.

Recommended Action:

1. Review and comment on the proposed draft ordinance.

IX. OTHER BUSINESS

ITEM NO. 4 LAND USE ELEMENT AMENDMENT (PA2013-098)

Site Location: City-wide

Summary:

Review of land use amendments as recommended by the Land Use Element Amendment Advisory Committee. These recommended amendments will be included in the project description for the draft environmental impact report. Formal Planning Commission public hearings on the proposed amendments are anticipated to occur in the spring of 2014.

Recommended Action:

1. Review and comment on the potential land use changes.

X. STAFF AND COMMISSIONER ITEMS

ITEM NO. 5 MOTION FOR RECONSIDERATION

ITEM NO. 6 COMMUNITY DEVELOPMENT DIRECTOR'S REPORT

Committee Updates:

1. Land Use Element Amendment Advisory Committee
2. General Plan/Local Coastal Program Implementation Committee

ITEM NO. 7 ANNOUNCEMENTS ON MATTERS THAT THE PLANNING COMMISSION MEMBERS WOULD LIKE PLACED ON A FUTURE AGENDA FOR DISCUSSION, ACTION, OR REPORT

ITEM NO. 8 REQUESTS FOR EXCUSED ABSENCES

XI. ADJOURNMENT

Sept. 19, 2013 Planning Commission Agenda Comments

Comments by: Jim Mosher (jimmosher@yahoo.com), 2210 Private Road, Newport Beach 92660 (949-548-6229). ~~strikeout~~ underline format is used to suggest changes to the passages quoted in *italics*

Item No. 1 Minutes of September 5, 2013

1. Page 1:

- a. Last paragraph: *"Motion made by Vice Chair Tucker and seconded by Commissioner Brown and carried (7 – 0), to approve the Minutes of the Planning Commission meeting of August 22, 2013, as corrected~~, as file.~~"*

2. Page 2:

- a. Line 1 of first motion: *"... to adopt Resolution No. ~~(INSERT RESO NUMBER) ???,~~ ..."* [note: based on the resolution number identified in the minutes for Item 5 (Woody's Wharf), the present resolution number is probably **1920**, and the resolution for Item 3 (Lido Villas) – which is also not identified -- was probably No. 1921]
- b. Line 5 of amended motion: *"... related to the choice of design concepts as **original** originally proposed including ..."*

3. Page 3:

- a. Paragraph 2 from end: *"Steve Mills, **Dart DART** Development, the applicant, thanked the Commission ..."*

4. Page 4:

- a. Paragraph 8: *"... the project will be subject to all of the ~~Cal-Green~~ CALGreen regulations ..."*

5. Page 7:

- a. Paragraph 4: *"Steve Mills, **Dart DART** Development, wondered if ..."*
- b. Paragraph 9, line 2: *"... and suggested stepping the **side site** slightly ..."* [?]
- c. Paragraph 10, line 2: *"Discussion followed regarding **minimizing restricting** allowable uses to "condominium and recreational"."*
- d. Page 8, paragraph 3: *"**Jeremy Jeramey** Harding, **GMB T&B** Planning, City Environmental Consultant, stated that ..."*

6. Page 10:

- a. Paragraph 12: *"~~Outside Counsel~~ Deputy City Attorney Kyle Rowen noted that ..."* [note: the term "Outside Counsel" may have been used at the hearing, but it gives the incorrect impression that Kyle is not connected with the City or the applicant]
- b. Last paragraph: *"... when the Planning Commission originally considered the Use Permit in November 2012, **the it** denied patron dancing on the basis that ..."*

7. Page 12:

- a. Paragraph 2 under Item 7: "*Vice Chair Tucker addressed items for discussion on the General Plan/Local Coastal Program Implementation Land Use Element Amendment Advisory Committee's upcoming agenda.*" [note: the audio indicates Vice Chair Tucker was responding to a question from the Chair regarding LUEAAC, and addressed the CEQA-required SEIR. GP/LCP is a different committee.]

Item No. 2 216 Crystal Variance (PA2013-118)

Regarding the draft Resolution of Approval (Attachment PC 1):

1. Section 1.1: "... and legally described as Lot 9, Block 5 requesting ..." [note: Sometimes further information is supplied identifying the map on which this is the description. In the present case, I believe the map being referred to is Balboa Island Section 5.]
2. Section 3:
 - a. A.5: "*The irregularly shaped buildable area **and** prohibits the ability to create additional parking without eliminating the habitable area of the first floor unit.*"
 - b. B.3: "*The existing duplex was permitted in 1951 to provide a 1-car garage per unit, per the Zoning Code in **affect effect** at that time.*"
 - c. C.1: "*The unusually large setback area and unusual triangular shape is not typical of other lots within the block or on Balboa Island and significantly limits the floor area and buildable area.*" [note: the City GIS map suggests there are about six triangular lots on Little Balboa Island and a similar number at the west end of the main island. If the desire is that these can all be developed to a FAR of 1.0, should the Zoning Code not be modified to say that?]
 - d. C.3: "*The proposed encroachment into the side yard setback, consistent with the existing structure, is reasonable in this case due to the unusual triangular shape that limits the buildable area.*" [I believe this is referring to the encroachment of the second floor into the alley. It needs, perhaps, to be balanced against the fact that on the ground floor this structure needs to be set back only 4 feet along the bulk of its alley frontage (because the alley is regarded as a "side" setback) compared to the 5 feet (?) required for the other lots along the alley.]
 - e. D.2: "*The proposed side yard setback along E. Bay Front Alley of 2 feet 6 inches is consistent with the existing structure **and** does not result in a special privilege because ...*"
3. Conditions of Approval (Exhibit "A"):
 - a. Condition 2: "*The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.*" [At the August 29, 2013, Zoning Administrator hearing, a resolution for approval omitted this standard condition, supposedly because the City Attorney had determined it (and similar statements reminding the applicant of the continuing applicability of state and other laws, as in Condition 5) to be superfluous, and recommended its removal. Since later resolutions have included it, again, it is unclear what the City's policy is.]

- b. Condition 12: "... to City's approval of the 216 Crystal Avenue Variance including, but not limited to, the Variance No. VA2013-005 (PA2013-118)."
- c. Condition 15: What does "...and to include **sound rating**" mean?
- d. Condition 17: "*The development site is subject to liquefaction zone policy and flood Zone; therefore, the structure shall comply with liquefaction and FEMA guideline policy.*" Does this mean the proposed construction will trigger the need to raise the foundation? If so, wouldn't the plans be completely different?

Regarding the draft Resolution for Denial (Attachment PC 2):

- 1. Section 2: I believe a CEQA determination is not required when an application is being denied (to quote from earlier resolutions of denial: "*Pursuant to Section 15270 of the California Environmental Quality Act (CEQA) Guidelines, projects which a public agency rejects or disapproves are not subject to CEQA review.*")
- 2. Section 4(?): The proposed resolution appears to be missing the Decision and signature sections.

CITY OF NEWPORT BEACH PLANNING COMMISSION MINUTES
Council Chambers – 100 Civic Center Drive
Thursday, September 5, 2013
REGULAR MEETING
6:30 p.m.

I. CALL TO ORDER - The meeting was called to order at 6:30 p.m.

II. PLEDGE OF ALLEGIANCE – Commissioner Brown

III. ROLL CALL

PRESENT: Ameri, Brown, Hillgren, Kramer, Lawler, Myers, and Tucker

ABSENT: Ameri (arrived at 6:33 p.m.)

Staff Present: Brenda Wisneski, Deputy Community Development Director; Leonie Mulvihill, Assistant City Attorney; Marlene Burns, Administrative Assistant; Tony Brine, City Traffic Engineer; and James Campbell, Principal Planner

IV. PUBLIC COMMENTS

Chair Hillgren invited those interested in addressing the Planning Commission to do so at this time. There being no response, Chair Hillgren closed the Public Comments portion of the meeting.

V. REQUEST FOR CONTINUANCES

Deputy Community Development Director Brenda Wisneski requested a continuance of Item No. 4, Newport Harbor Yacht Club (PA2012-091), to a date uncertain.

Motion made by Vice Chair Tucker and seconded by Commissioner Brown and carried (6 – 0), to continue Item No. 4 on the agenda, to a date uncertain.

AYES: Brown, Hillgren, Kramer, Lawler, Myers, and Tucker

NOES: None

ABSENT: Ameri

Commissioner Ameri arrived at this juncture (6:33 p.m.)

VI. CONSENT ITEMS

ITEM NO. 1 MINUTES OF AUGUST 22, 2013

Chair Hillgren noted corrections submitted by him and Mr. Jim Mosher, a member of the public.

Interested parties were invited to address the Planning Commission on this item, there was no response and Chair Hillgren closed public comments for this item.

Motion made by Vice Chair Tucker and seconded by Commissioner Brown and carried (7 – 0), to approve the Minutes of the Planning Commission meeting of August 22, 2013, as corrected, as file.

AYES: Ameri, Brown, Hillgren, Kramer, Lawler, Myers, and Tucker

NOES: None

VII. PUBLIC HEARING ITEMS**ITEM NO. 2 UPTOWN NEWPORT MSDR (PA2013-129)**
Site Location: 4311-4321 Jamboree Road

Commissioner Lawler reported a business interest with a property located near the subject property and requested being excused and the request was granted. He departed the chambers at this time.

Associate Planner Rosalinh Ung presented background of the item noting that the Commission continued the matter from its last meeting and directed the applicant to make changes to the architectural elements of the project including enhancing the main entry at Jamboree Road and Fairchild to be more iconic, redesign Building 2 so it has less of an "institutional" architectural theme by using more high-quality finish material and require the applicant to use enhanced material/finish (i.e., stone, tile, limestone plaster, and fiber cement panel), and remove smooth plaster as a part of enhanced materials/finish list and replace it with "or similar enhanced quality materials approved by the Community Development Director" as noted in the architectural drawings. She reported that the changes were made and the revised plans were provided to the Commission and made available to the general public. She stated that the staff report includes a link to the applicable zoning documents and design guidelines. She deferred to the applicant for a brief presentation of the changes made.

Chair Hillgren opened the Public Hearing.

Bill Shopoff, The Shopoff Group, introduced members of his team and thanked staff and the Planning Commission for their efforts in bringing the project forward, noting that it has been an extremely collaborative effort. He reported that the suggestions of the Commission have been incorporated into the revised plans and listed the next steps for the project, pending approval by the Commission.

Ken Nilmeier, MVE Architects, provided a PowerPoint presentation and highlighted the changes made to the plans. He addressed proposed modifications to Building 1 and the use of enhanced materials, elevations, proposed enhancements to the main entry, focal points, the tower element, modifications to building massing, and addition of vertical enhanced materials. He then addressed the proposed modifications to Building 2, efforts at avoiding an "institutional" look, changes in the color palette and use of enhanced materials.

Vice Chair Tucker addressed the tower element at Jamboree and Fairchild noting that he preferred the original tower element with enhanced materials and wondered if changes can be made to revert back to the original tower element.

Mr. Nilmeier reported that would be possible per the Commission's direction to include the previous concept for the tower, using enhanced materials.

Vice Chair Tucker confirmed that the list of enhanced materials would apply to wherever the reference to enhanced materials appears on the plans. He commented on the modifications to Building 2 and Building 1, except for the tower element, wherein he would prefer the original concept using enhanced materials.

Mr. Shopoff indicated he preferred the original tower element concept, but would accept the second concept as well.

Chair Hillgren invited members of the public interested in addressing the Commission on this matter, to do so at this time.

Jim Mosher thanked staff for making the planning documents available to the public. He addressed the circulation pattern and stressed that it appears that in ratifying the site review, the Commission will be ratifying a new subdivision of the lots within the parcel, per the Zoning Administrator's decision. He referenced the northern entrance to Jamboree noting that it could be in different hands than the rest of the Phase 1 development. He hoped that the Commission would offer clarification on the impacts of that decision.

Chair Hillgren noted that master control is required for the entrances and that there is a contingency that one phase support the other.

There being no others wishing to address the Commission, Chair Hillgren closed the Public Hearing.

Vice Chair Tucker noted that Secretary Kramer had suggested modifications to the tower element and wondered regarding his thoughts on the revised concept.

Secretary Kramer reported that he is satisfied with the new design created by the applicant for the tower element and that it serves to enhance the project.

Vice Chair Tucker noted his support of the motion and clarified it would include the list of enhanced materials wherever reference to it is made.

Chair Hillgren stated he concurs with Vice Chair Tucker, but felt that the ultimate developer should be allowed flexibility.

Motion made by Secretary Kramer and seconded by Commissioner Ameri to adopt Resolution No. (INSERT RESO NUMBER), finding that all environmental effects of the Uptown Newport Planned Community have been previously addressed by the certification of Environmental Impact Report No. ER2012-001 (SCH No. 2010051094) and approving Master Site Development Review No. SD2013-002 with the changes submitted by the applicant.

Amended Motion made by Secretary Kramer and seconded by Commissioner Ameri and carried (6 – 1), to adopt a resolution , finding that all environmental effects of the Uptown Newport Planned Community have been previously addressed by the certification of Environmental Impact Report No. ER2012-001 (SCH No. 2010051094) and approving Master Site Development Review No. SD2013-002 with the changes submitted by the applicant and allowing the developer flexibility related to the choice of design concepts as original proposed including the alternative design for the tower element.

AYES: Ameri, Brown, Hillgren, Kramer, Myers, and Tucker
NOES: None
RECUSED: Lawler

Commissioner Lawler returned to the Chambers and took his place on the dais.

ITEM NO. 3 LIDO VILLAS (PA2012-146)
Site Location: 3303 and 3355 Via Lido

Assistant Planner Makana Nova presented details of the report noting that questions from the Commission during a previous meeting have been addressed in the report. She stated that at this time, the applicant will provide a presentation on the project.

Chair Hillgren opened the Public Hearing and invited the applicant forward for a presentation.

Steve Mills, Dart Development, the applicant, thanked the Commission for considering the project, introduced his partner and deferred to the architect for a presentation.

Robin Donaldson of Shubin and Donaldson Architects, project architect, provided a PowerPoint presentation, noting that staff has done a great job addressing the planning issues at the prior Planning Commission meeting. He introduced David Larkins, Landscape Architect, who will provide information regarding the landscape plans. He commented on the spirit of the architecture, the inspiration behind the project and using the Lido Village Design Guidelines. He commented on the uniqueness and historical context of the area. He highlighted key points within the Guidelines that helped direct the project including identification of conditions around the site. He addressed location, site boundaries, street-focused edges, opportunities for open space/focal point, open space network and pedestrian connections, the site plan and ADA accessibility.

David Larkins, LRM Landscape Architecture, presented details of the landscape plan addressing the location of nodes as identified by the Lido Village Design Guidelines, types of proposed trees, use of drought-tolerant plants, pedestrian circulation, and enhanced pavement, inclusion of a water feature, and the integration of walk-ups to the residential units from the surrounding streets.

Mr. Donaldson referenced the Guidelines and noted that each unit has its identity to the street and he discussed parking, service circulation, architectural design, materials and colors, examples of the various units, elevations and the existing commercial building on the property.

Chair Hillgren invited members of the public interested in addressing the Commission on this matter, to do so at this time.

Jim Mosher referenced written comments he submitted previously and recommended that the Commission review the Zoning Code in terms of the minimum site area required and the purpose for planned community districts prior to recommending approval of the proposed Planned Community District. He opined that the proposal does not meet the Zoning Code as it is not a diversified development but rather monolithic and of a single-use. He expressed concerns with the proposed height noting that it is a deviation from Coastal Commission requirements based on comments submitted by the California Coastal Commission. He commented on the architecture noting that it includes façades dominated by balconies which has been shown as an example of bad architecture in the design guidelines for the previous item.

Chair Hillgren wondered regarding allowing variations to the setbacks and the intent of the street front at the ground plane noting that it may provide opportunities for additional landscape. In response to his inquiry, Mr. Donaldson reported that there was no guidance in the Guidelines about residential buildings addressing the street. He stated that there was an interest in having a presence on the street and decided on allowing residential use as well as pedestrian use. He reported having flexibility to make the area bigger for residents.

Chair Hillgren felt that the proposed hardscape will not be very functional for residents. He stated he would like to see flexibility for the developer to work with staff to come up with a program that works for Lido Village as well as the ultimate users of the project.

In terms of the height, Chair Hillgren felt that the project would be better served if it had more height and addressed the possibility of creating more space on the ground plane. Mr. Donaldson indicated they would be happy to have extra height.

Commissioner Lawler inquired regarding sustainability measures and Mr. Donaldson reported that the project will be subject to all of the Cal Green regulations and will have enhanced, energy-saving and sustainable features such as tankless water heaters, permeable pavers, and water-efficient landscaping. He added they are not pursuing a LEED certified project, but the project will be a resource-efficient project.

Secretary Kramer commended the applicant for the project but wondered if it is right for Lido Village.

Members of the Planning Commission reviewed the material board for the project.

There being no others wishing to address the Commission, Chair Hillgren closed the Public Hearing.

Ms. Nova reported that the Planning Commission would be making a recommendation to City Council for the applications listed including adoption of the Mitigated Negative Declaration and approval of actions listed.

Secretary Kramer inquired regarding maintenance of the proposed glass features and issues voiced by Mr. Mosher.

Principal Planner, Jim Campbell, reported that in terms of the adoption of the Planned Community Text, the Zoning Code establishes a ten acre limit for urbanized areas and specifies a diversification of uses and that in relation to this project, the applicant is asking for a waiver. Staff has viewed the request considering the broader context of Lido Village as a whole and as described in the Design Guidelines. He added that the Planned Community Text allows for flexibility in establishing standards that are more appropriate for the

urban site. Regarding height, Mr. Campbell noted that the Coastal Commission is reviewing maintaining the height limitation at thirty-five (35) feet, and that the City's height limits have the ability to have a five-foot exception for sloping roofs, architectural features, stair wells and elevator shafts and that the project proposes flat roofs. Mr. Campbell indicated that he shares Mr. Mosher's concerns regarding the Coastal Commission's approval of building heights beyond thirty-five (35) feet. He stated that the architectural features above thirty-five (35) feet could be cut off by the Coastal Commission.

Secretary Kramer stated he shares Chair Hillgren's desire to increase the height of the project and asked that the applicant address the height issue as well as maintenance of glass features.

Mr. Campbell cautioned that the MND is predicated on the specific design presented. Any recommendation for increased height may be seen by the Coastal Commission as too tall. He stated he feels comfortable from the local perspective that since the City has been historically consistent in allowing these types of limited architectural exceptions that it is consistent with the Coastal Land-Use Policy, given the City's historical interpretation of height limits.

Assistant City Attorney Leonie Mulvihill identified that the PC-Text has a minimum acreage requirement, but clarified that the ordinance has an express ability for Council to waive it. The ordinance contemplates that there would be projects or communities that might merit a waiver.

In response to Commissioner Ameri's inquiry regarding guest parking, Ms. Nova reported that twelve guest spaces are required and twelve are provided. She added that the applicant has worked extensively with the Public Works Department to provide sufficient access to the minimum number of guest spaces and to the garage spaces.

Commissioner Ameri expressed concerns regarding the architecture stating that to him, it has the look of a glorified motel. He acknowledged the Design Guidelines and related limitations but suggested there may be another design that would avoid the "motel" look resulting from the continuous balconies along the front elevations.

Vice Chair Tucker referenced written comments he submitted regarding CEQA. He agreed with Chair Hillgren regarding landscape materials and indicated he is not crazy about the architecture but acknowledged the need to follow the Guidelines which, in this case, were not developed by the Planning Commission. He noted that the applicant is entitled to do what he intends to do. He expressed concerns regarding maintenance of the project over an extended period of time but commented positively that the units are large. Maintenance will be addressed through the conditions and CC&Rs and his suggestion that the City be made a third-party beneficiary under those documents with a right to enforce the CC&Rs, without the duty to enforce the CC&Rs, has been incorporated.

Commissioner Brown commented positively on the project including the pass-through for pedestrians, parking and the use of pavers rather than concrete and the color palette and stated that while he feels neutral regarding the architecture, the Commission is not in a position to impose what it thinks the architecture should be, provided it is consistent with the Guidelines. He commented positively on the staggered setbacks and indicated he would support increasing the height of the first floor level if there were some ways of minimizing the risk in terms of consideration by the Coastal Commission. He addressed the layout of the units, the glass façade facing the water, changes in the unit type throughout the site, and indicated support for the project.

In response to an inquiry from Chair Hillgren asking if the group that developed the Design Guidelines for this project was noticed for this project, Ms. Nova reported that no special notice was provided, other than the required 300-foot radius surrounding the project site and that no additional public comments have been received since the prior Planning Commission meeting other than those from Mr. Mosher.

Chair Hillgren commented positively on parking and expressed concerns regarding the Master Plan for the area and opportunities for bicycle paths/stripping.

City Traffic Engineer Tony Brine reported there is no specific bicycle plan in place for Lido Village. However, the City just started the development of a City-wide Bicycle Master Plan, which would include this area.

It was noted that the project involves changing the driveway access and there will be a relocation of three parking spaces along two of the streets, which will result in no net change to the number of street parking spaces, which will remain designated and metered.

Discussion followed, inquiring if the last Planning Commission meeting where this project was discussed was considered a Public Hearing. It was noted that the Public Hearing was not opened at the prior meeting so it would qualify as a public or informational meeting and not a hearing.

Chair Hillgren commented on the architecture and the importance of the quality of material, landscaping and a coastal landscape palette. He addressed common living areas and the water feature and the importance of proper maintenance. Rather than the proposed fountain, which can be challenging in terms of maintenance, he suggested adding landscaping at the corner as well as seating areas. He addressed the expiration and staff clarified that twenty-four months would be from the time of Coastal Commission approval. Regarding notification of future potential owners regarding the development conditions of approval, and whether that would be appropriate for condominiums, Ms. Mulvihill stated that notification regarding the CC&Rs would be more appropriate than development conditions of approval.

Discussion followed regarding the minimum clearance and compliance with community noise controls as applicable to adjacent land uses. It was noted that compliance with the City's Noise Ordinance is necessary and applicable. The standard condition regarding community noise controls could be deleted and Chair Hillgren directed staff to do so.

Chair Hillgren identified necessary changes or corrections to the draft resolution and verified sections related to water meter and sewer clean up and maintenance of on-street parking spaces during initial development. Mr. Campbell suggested removing the latter condition of approval since the applicant is not responsible to maintain parking in the public right-of-way. Chair Hillgren commented regarding the maintenance of common landscape areas and felt that the future Homeowners Association should be responsible for maintaining all landscape areas.

Ms. Mulvihill reported that in a condominium project there will generally be private landscape areas and common landscape areas which is what the condition is speaking to. She suggested that the applicant clarify the issue.

In response to Chair Hillgren's inquiry, Ms. Mulvihill stated that a condition could be added to require the street frontage areas to be identified as common areas so that the Homeowners Association would maintain it for a consistent look around the project.

Chair Hillgren inquired regarding permitted uses in terms of short-term lodging and adult daycare and Ms. Nova explained that this section was modified to mirror the RM permitted use Standards of the Zoning Code.

Mr. Campbell stated the Commission may consider prohibiting short-term lodging if it so desires as the project is similar to other single-family areas that currently do not have the privilege to accommodate short-term lodging.

Discussion followed regarding the adult day care use, constraints regarding concentration and the possibility of limiting the number, overall. It was noted that when the PC-Text is silent, the Zoning Code sections would apply. Flexibility is provided in the prohibited uses, allowing for the interpretation of the Zoning Code provision to be applied.

Ms. Mulvihill clarified the matter of permitted and prohibited uses and discretion by the Community Development Director to consider uses that are similar to permitted uses and whether or not they are explicitly listed. If a PC-Text is silent, the applicable Zoning Code provisions would apply.

Vice Chair Tucker suggested listing permitted uses and indicating that everything else is prohibited. Regarding CEQA, he reported receiving a letter from Robert Hawkins and noted that staff addressed the issues he raised at the previous Planning Commission meeting and that the document prepared for the project, adequately addressed the cumulative impacts of the project. He noted references to the Santa Ana Unified School District and Measure G in Condition No. 85 and suggested they should be replaced by the

Newport-Mesa School District. Regarding a reference to a Master Association and Sub-Association in Condition No. 86a, he noted that this should be one association taking into account the size of the project. He suggested changing Condition No. 86i to 86j and insert as 86i as condition as follows: "A provision that the garage parking spaces shall be used only for parking of operational vehicles and not for storage". In addition, he suggested changing Condition No. 86b to state: "A provision that the architecture and exterior building materials of the dwelling units shall be maintained in a quality, color and type so the appearance is consistent with the original project as developed".

Chair Hillgren invited the applicant to address the Commission.

Mr. Donaldson stated that they take exception to the suggested modification to Condition No. 86i regarding storage within private parking garages.

Steve Mills, Dart Development, wondered if restricting visitor parking to visitors and resident parking to residents rather than specifically prohibiting storage in the garage would be appropriate, taking into account the possibility that a resident may not own a car.

Vice Chair Tucker didn't believe so, noting that it is important that parking spaces be available for parking and Chair Hillgren agreed, adding that it is important to ensure that parking spaces are used for parking.

Commissioner Myers agreed, adding that he believes the project is under-parked. He felt that effort could have been made to provide surface parking for visitors in the inner area. He stated that residents will use visitor parking for convenience and that using garages for storage will add to the parking load.

Chair Hillgren asked the applicant to identify common and private areas.

Mr. Donaldson stated that due to the configuration and importance of landscape along the street, there are no areas in the hardscape and landscape that are not considered common areas. So, that, in terms of maintenance, it's all common area. He expressed confidence in the ability to maintain the architectural materials.

Regarding the issue of height, Mr. Donaldson, confirmed that the height is measured from the existing grade and suggested stepping the side slightly and stated that in terms of risk, the first priority is the quality of the project and requested flexibility to pursue the matter.

Discussion followed regarding minimizing allowable uses to "condominium and recreational".

Regarding permitted and prohibited uses within the PC-Text, Ms. Nova suggested keeping A-C and removing the rest of the text.

Ms. Mulvihill suggested that given that current State law allows some uses such as childcare and adult care to be allowed, language be added that has land uses not listed above, are not allowed except as provided by Chapter 20.12 of the Zoning Code or required by State law.

Secretary Kramer confirmed that the suggested language be added and asked the applicant to work with staff to discuss the possibility of changing the height.

Vice Chair Tucker asked for added language to give flexibility to the applicant to use landscaping rather than a fountain, depending on the final design and that they work with staff to develop a landscape palette to accentuate the coastal architecture and flexibility on the design at the ground plane to be able to have a more robust landscaped edge along the street and make the ground plane landscape as functional as possible for residents.

Mr. Campbell addressed the issue of height and reported that the particular PC-Text is specific regarding the height and suggested limiting the height to five (5) feet above thirty-five (35) feet.

Chair Hillgren suggested specific limitations for the height of the roof top (33'10"), architectural projection (40') and the guard rail (37'4").

Ms. Mulvihill reported that the Coastal Land Use Plan has a height limit of thirty-five (35) feet which staff has always applied with flexibility allowed for the architectural design, which is what is being proposed, therefore, being consistent with the Coastal Land Use Plan.

Brief discussion followed regarding the Mitigated Negative Declaration.

Jeremy Harding, CMB Planning, City Environmental Consultant, stated that one of the rules of CEQA provides for a public disclosure document and during the MND review period, a specific height was listed and to raise the height following public review could be construed as denying the public a meaningful opportunity to make comments on the project regarding aesthetic impacts.

Ms. Mulvihill reported that if there is a desire of the Commission to change the project, the recommendation would be to re-circulate the MND to allow the public to comment. If no changes are proposed, the Commission would proceed approving as proposed.

Vice Chair Tucker noted that the project is within the Guidelines and did not recommend recirculation of the MND.

Ms. Mulvihill added that they would have the ability to approach this issue with Coastal Commission staff.

Chair Hillgren withdrew his suggestions regarding height.

Mr. Campbell referenced Condition No. 58 and made a modification regarding relocation of proposed accent palms in order to provide site distance around the corner for vehicles.

Commissioner Ameri suggested that the applicant reconsider the building façades and for staff to develop ideas for a softer look.

Motion made by Secretary Kramer and seconded by Commissioner Lawler and carried (7 – 0), recommending City Council adopt Mitigated Negative Declaration No. ND2013-001; approve General Plan Amendment No. GP2012-005; approve Local Coastal Plan Amendment No. LC2013-001; approve Code Amendment No. CA2012-008; approve Site Development Review No. SR2013-001; and approve Tract Map No. NT2013-001 (Tentative Tract Map No. 17555), as discussed and amended above.

AYES: Ameri, Brown, Hillgren, Kramer, Lawler, Myers, and Tucker
NOES: None

ITEM NO. 4 NEWPORT HARBOR YACHT CLUB (PA2012-091)

Site Location: 720 West Bay Avenue, 800 West Bay Avenue, 711-721 West Bay Avenue, and 710-720 West Balboa Boulevard

The aforementioned item was continued to a date uncertain under Requests for Continuances.

ITEM NO. 5 WOODY'S WHARF USE PERMIT (PA2011-055)

Site Location: 2318 Newport Boulevard

Deputy Community Development Director Brenda Wisneski provided a description of the project and addressed background; prior actions by the Planning Commission, appeal by the applicant to Council and modification of the project by the applicant to include an enclosure to the outdoor patio area and a request to have the Planning Commission reconsider the project. She reported that the applicant has submitted a revised application including a Use Permit, requesting their original operations allowing for patron dancing, a modified floor plan to remove a row of chairs after 10:00 p.m., extending the opening hour to 10:00 a.m. and the closing hour to 2:00 a.m., modifying the required parking and the use of valet parking. She addressed a request for a variance related to the proposed covered patio and encroachment of the cover to the bulkhead setback. She addressed surrounding properties and uses, history of the property and entitlements, previous approvals by the Planning Commission, denial of patron dancing, project-specific conditions of approval, the proposed enclosure of the

patio area, results of noise studies, resident concerns, findings and recommendations. She referenced recommended changes to the conditions distributed to the Commission.

Regarding the service of appetizers only after 10:00 p.m., Commissioner Brown wondered if that is consistent with similar uses in the area. Ms. Wisneski responded in the affirmative.

Discussion followed regarding the hours of operation for the adjacent business (American Junkie), defining valet parking "as needed" at the discretion of the business owner, minor corrections to the documents, impacts of noise to neighboring properties, consistency with the current operation of the interior allowing dining on the patio until 2:00 a.m., concurrence of the owner with the proposed changes, Type 47 liquor license, dance permit and operator license. It was noted that they do not have a dance permit but rather have a live entertainment permit.

Chair Hillgren opened the Public Hearing and invited the applicant forward for a presentation.

Mark Serventi, applicant, introduced his partners, attorney and consultants. He stated agreement with the staff report and all conditions of approval except for maintaining the seating arrangement on the patio and prohibiting patron dancing. He referenced a list of open issues and requested modification to some of the conditions of approval. He addressed a history of the property, trying to legitimize past operations, installation of curbs, closure of docks, investments in sound systems, sound checks, prior actions by the Planning Commission and amendments to their application. He addressed results of the noise study, the patio enclosure, the importance of patron dancing in operations and cover charges used as a screening tool. Mr. Serventi presented proposed changes to the conditions of approval and benefits of having a cover charge and summarized the request. He addressed valet parking and reported that the property owner is in favor of the application.

In response to an inquiry from Chair Hillgren, Mr. Serventi reported that no dancing would be allowed in the patio and that it would only be allowed inside.

Interested parties were invited to address the Commission on this matter.

Larry Edwards voiced support for the project with the inclusion of dancing. He commented positively on the operation.

Kent Stoddard urged the Commission to deny the application and listed past and current violations regarding dancing and use of the patio. He noted that the Police Department supports denial of the application and noted the resulting noise and increased crime in the area. He addressed the negative impacts of the operation to nearby residents.

Roger Diamond, Attorney for the applicant, commented on Mr. Stoddard's previous concerns regarding noise and his recommendation for a noise study, with which his client proceeded at great expense as well as the City's noise study and results. He stressed there is no noise problem and asked that the Commission respect the application and allow patron dancing as well as extended hours until 2:00 a.m.

In response to Chair Hillgren's inquiry, Mr. Diamond reported that his client does not concede that there have been violations in the past and felt this is not the appropriate forum to litigate that. He felt that the Commission should judge the project on its merits; is a legitimate business and deserves to be approved. He referenced additional permits needed and clarified that the approval of the application would allow Woody's to get the appropriate permits under which they have been operating.

Discussion followed regarding the operation's noncompliance with conditions.

Assistant City Attorney Mulvihill reported this is a different application than the one considered originally and that the public has the right to raise concerns as it sees fit. She reported it is not appropriate for her to comment on the status of prior violations but what is before the Commission is just the application.

Dennis Halloran stated that noise is one of the problems and impacts to nearby properties. He expressed concerns regarding a decreased quality of life because of the late-night element and spoke in opposition to the application. He urged the Commission to let it stay as a restaurant.

Joe Balzer spoke in support of the application noting the existence of nightlife and dancing in the area over time. He commented positively on the management of the operation and the benefits of "walk to" nightlife.

Norman Einhorn expressed concerns with the resulting noise and spoke in opposition to the application. He noted prior violations by the business and urged the Commission to deny the application.

Augustine Dillon spoke in support of the application and commented positively on allowing patron dancing.

James "Jamie" Duarte commented positively on the application and the operation. He reported that dancing has taken place over the history of the business and is a great restaurant. He urged the Commission to give them the ability to apply for a dancing permit and noted that American Junkie has a dancing permit.

Jim Mosher referenced last-minute changes to the conditions of approval and wondered if they have been made available to the public. He addressed the Conditional Use Permit and the role of the Commission to apply policy set by Council. He noted the findings needed for approval and the standard to be applied. He indicated opposition to the application. He addressed the variance of the ten (10) foot setback and the need to provide public access along the bay.

Tom Durant addressed the reduced quality of life due to changes in operations by Woody's Wharf. He indicated opposition to the application.

There being no others wishing to address the Commission, Chair Hillgren closed the Public Hearing.

Commissioner Myers wondered regarding the Commission's ability to approve the variance but not the changes to the conditional use. Ms. Wisneski responded in the affirmative.

Commissioner Kramer commented on the appropriateness of the solution to mitigate noise and addressed the issue of patron dancing and use of the patio. In response to his inquiry, Ms. Wisneski reported that changes related to the patio cover would not change the occupancy of the building so that restrooms would not be affected.

Discussion followed regarding deficiencies in the operator's public relations with nearby residents and the possibility of allowing patron dancing.

Ms. Mulvihill reported on the existing state of the citations noting that currently, dancing is not a permitted use. Staff has provided more information on the issue and Ms. Mulvihill stated that dancing is not a permitted use and that although dancing has occurred; it would be a new allowable use.

Outside Counsel Kyle Rowen noted that the issue of previous violations is not presently before the Commission but reported that the City has issued citations and there has been no final adjudication for any of the citations and presently, it should not be considered a factor in the current assessment. He noted that they currently have an entertainment permit in which dancing is prohibited.

Commissioner Brown commented on the prohibition of nightclubs in the zone and wondered whether Woody's is a restaurant or a nightclub. In response to his inquiry regarding the definition of a nightclub, Ms. Wisneski noted that the Zoning Code distinguishes between the two uses and the types of ABC licenses issued.

Commissioner Brown stated that for the purposes of considering the present application, Woody's is considered a restaurant.

Ms. Wisneski commented on compatibility with surrounding uses.

Discussion followed regarding permitted dancing at the operation next door to Woody's in a zone not permitted for late-night uses and nightclubs.

Ms. Wisneski reported that patron dancing does not equate to a nightclub, based on the Zoning Code, however, when the Planning Commission originally considered the Use Permit in November 2012, the denied patron dancing on the basis that it would contribute to a nightclub atmosphere.

Discussion followed regarding the dancing permit issued to the neighboring property, changes in the Zoning Code and the lack of enforcement, historically, regarding the issue of dancing related to Woody's.

Ensuing discussion followed regarding allowable uses for a restaurant compared to a nightclub, prior ABC investigations related to Woody's and consideration of the business as a restaurant. Discussion continued regarding compatibility with allowable uses in the vicinity and the operating characteristic of the business.

Commissioner Lawler reported that one of the issues is noise and that dancing does not create noise. He noted that dancing would be in the interior of the building and that there already is music in the interior until 2:00 a.m.

Commissioner Brown noted that dancing is permitted in a nearby location and that it should be considered in allowing dancing at Woody's.

Ms. Wisneski reported that staff's recommendation to deny patron dancing is consistent with the Planning Commission's findings made in November 2012.

Chair Hillgren commented on the mixed-use area, addressed compatible surrounding uses and felt that continuation of a use should not be considered on the basis of prior use, but rather whether or not is it compatible with the uses in the neighborhood.

Vice Chair Tucker commented on the noise issue and the need to comply with the Code. He referenced the results of the noise study and stated that to him, it is not an issue. The issue relates to the compatibility with surrounding allowed uses. He addressed updates to the General Plan and new policies and findings as relevant and not whether the adjacent property allows dancing or not. He agreed that the project should be evaluated on the merits, rather than on whether they have allowed dancing in the past or are in violation of any code.

Commissioner Ameri felt that if the operators can improve the service provided and still be within the law, then it should be approved. He reported that dancing will not add to the noise and didn't see a problem with allowing it. If it proves to be problematic, then it would be up to the Police Department to address.

In response to Commissioner Kramer's inquiry regarding a grandfathering provision, Ms. Mulvihill reported that their present permit specifically states no dancing. The subsequent permit they would apply for is issued by Revenue and is more of a revenue permit as opposed to a discretionary permit.

Discussion followed regarding the chances of success with the City in approving a dancing permit if the Commission approves it. Ms. Mulvihill stated that the approval would include site-specific provisions.

Mr. Rowen addressed issues related to enforcement and conditions that Woody's would have to meet prior to having a dancing permit issued to them. If the Commission were to allow dancing, it would not necessarily result in the issuance of a dancing permit by the City; they would still need to meet the requirements per the Municipal Code and amend their present live entertainment permit and obtain an appropriate Operator's License issued by the Police Department.

It was noted that regarding the operator's permit the City would provide notice that an action is being considered to surrounding property owners.

Chair Hillgren agreed with Vice Chair Tucker that the compatibility issue changed with the revised General Plan and the addition of residential uses in the area. He added that the noise issue has been resolved but stated that the fundamental use needs to be limited to weekends.

Commissioner Ameri stressed that it should be specifically stated that no dancing is allowed on the patio.

Chair Hillgren noted that it is specified that dancing would only be in the interior.

Discussion followed regarding incorporating changes proposed by the applicant and staff to the Conditions of Approval and specifically addressing Conditions 51 and 52.

Chair Hillgren noted that he did not agree with changes requested by the applicant regarding Condition 52. He clarified the intent of Condition 51, and modified the condition to delete the prohibition for door charge, but maintained the prohibition of minimum drink orders.

Vice Chair Tucker indicated he will not support the motion adding that it affects the quality of life in relation to the existing and future residential component.

Motion made by Chair Hillgren and seconded by Commissioner Ameri and carried (5 – 2), to adopt Resolution No.1922 approving Conditional Use Permit No. UP2011-010 and Variance No. VA2013-006, to allow the proposed patio cover to encroach into the bulkhead setback; extend the opening hour of the restaurant and outdoor dining area to 10:00 a.m., daily, and extend the closing hour of the outdoor dining area to 2:00 a.m., on weekends (Friday and Saturday nights); require the use of the valet parking on an as-needed basis only; and waiver of a portion of the required parking and allowing the introduction of patron dancing within the interior of the restaurant but denying the removal tables and chairs within the outdoor dining area on week nights (Sunday to Thursday nights).

AYES: Ameri, Brown, Hillgren, Kramer and Lawler
NOES: Myers and Tucker

VIII. STAFF AND COMMISSIONER ITEMS

ITEM NO. 6 MOTION FOR RECONSIDERATION - None

ITEM NO. 7 COMMUNITY DEVELOPMENT DIRECTOR'S REPORT

Committee Updates:

1. Land Use Element Amendment Advisory Committee
2. General Plan/Local Coastal Program Implementation Committee

Ms. Wisneski announced an upcoming special meeting of the Planning Commission on September 11, 2013, at 4:00 p.m. in conjunction with the Balboa Village Advisory Committee and the Urban Land Institute. Additionally, she announced that on Monday, September 9, 2013, at 6:00 p.m., there will be a public information meeting in the Community Room updating the community on the outcome and recommendations by the Land Use Element Amendment Advisory Committee. She reported that staff has been having discussions with Coastal Commission staff regarding Local Coastal Program Implementation.

Vice Chair Tucker addressed items for discussion on the General Plan/Local Coastal Program Implementation Committee's upcoming agenda.

Informal recommendations will be given to the Planning Commission at its meeting on September 19, 2013.

ITEM NO. 8 ANNOUNCEMENTS ON MATTERS THAT THE PLANNING COMMISSION MEMBERS WOULD LIKE PLACED ON A FUTURE AGENDA FOR DISCUSSION, ACTION, OR REPORT - None

ITEM NO. 9 REQUESTS FOR EXCUSED ABSENCES

Vice Chair Tucker requested an excused absence for the Planning Commission meeting of October 3, 2013.

Chair Hillgren noted that he will be absent for the Planning Commission meeting of September 19, 2013.

IX. ADJOURNMENT

There being no further business to come before the Planning Commission, the meeting was adjourned at 11:00 p.m.

The agenda for the Regular Meeting was posted on August 30, 2013, at 3:40 p.m., in the binder and on the City Hall Electronic Bulletin Board located in the entrance of the Council Chambers at 100 Civic Center Drive.

Bradley Hillgren, Chair

Kory Kramer, Secretary

DRAFT

Commissioner Brown noted that dancing is permitted in a nearby location and that it should be considered in allowing dancing at Woody's.

Ms. Wisneski reported that staff's recommendation to deny patron dancing is consistent with the Planning Commission's findings made in November 2012.

Chair Hillgren commented on the mixed-use area, addressed compatible surrounding uses and felt that continuation of a use should not be considered on the basis of prior use, but rather whether or not is it compatible with the uses in the neighborhood.

Vice Chair Tucker commented that a plan to reduce noise was not relevant since all projects are required on the noise issue and the need to comply with the Code with respect to noise. So he referenced the results of a the noise study projecting required compliance cannot be a basis to approve the Applicant's request and stated that to him, it is not an issue. The real issue before the Commission is relates to the compatibility of the proposed changes requested by the Applicant with surrounding allowed uses. He addressed the updates to the General Plan in 2006 which changed allowed uses in the vicinity. Specifically, Vice Chair Tucker read from Municipal Code Section 20.52.020 a finding the Commission must make in order to approve a modification to a conditional use permit: "The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity". Due to residential uses which are now allowed on the property to the south contiguous with the Applicant's property, the changes Applicant requests to its business would have to be found consistent with allowed uses in the vicinity. He noted that while the use of the adjoining property to the north for dancing had some relevance, the contiguous property to the south under development would have many residential units so it might not be a good idea to allow dancing at Applicant's because it could result in some patrons having too much to drink and leaving the Applicant's business at 2:00 in an area with residential uses and new policies and findings as relevant and not whether the adjacent property allows dancing or not. He agreed that the project should be evaluated on the merits, rather than on whether Applicant in the past they had ve allowed dancing in the past or was are in violation of any permit requirement code. Accordingly, Vice Chair Tucker reiterated that in order to vote in favor of Applicant's request to allow dancing a finding of compatibility would need to be made.

Commissioner Ameri felt that if the operators can improve the service provided and still be within the law, then it should be approved. He reported that dancing will not add to the noise and didn't see a problem with allowing it. If it proves to be problematic, then it would be up to the Police Department to address.

In response to Commissioner Kramer's inquiry regarding a grandfathering provision, Ms. Mulvihill reported that their present permit specifically states no dancing. The subsequent permit they would apply for is issued by Revenue and is more of a revenue permit as opposed to a discretionary permit.

Discussion followed regarding the chances of success with the City in approving a dancing permit if the Commission approves it. Ms. Mulvihill stated that the approval would include site-specific provisions.

Mr. Rowen addressed issues related to enforcement and conditions that Woody's would have to meet prior to having a dancing permit issued to them. If the Commission were to allow dancing, it would not necessarily result in the issuance of a dancing permit by the City; they would still need to meet the requirements per the Municipal Code and amend their present live entertainment permit and obtain an appropriate Operator's License issued by the Police Department.

It was noted that regarding the operator's permit the City would provide notice that an action is being considered to surrounding property owners.

Chair Hillgren agreed with Vice Chair Tucker that the compatibility issue changed with the revised General Plan and the addition of residential uses in the area. He added that the noise issue has been resolved but stated that the fundamental use needs to be limited to weekends.

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Chair Hillgren noted that he did not agree with changes requested by the applicant regarding Condition 52. He clarified the intent of Condition 51, and modified the condition to delete the prohibition for door charge, but maintained the prohibition of minimum drink orders.

Vice Chair Tucker indicated he will not support the motion adding that it affects the quality of life in relation to the existing and future residential component [and the required compatibility finding cannot be made](#).

Motion made by Chair Hillgren and seconded by Commissioner Ameri and carried (5 – 2), to adopt Resolution No.1922 approving Conditional Use Permit No. UP2011-010 and Variance No. VA2013-006, to allow the proposed patio cover to encroach into the bulkhead setback; extend the opening hour of the restaurant and outdoor dining area to 10:00 a.m., daily, and extend the closing hour of the outdoor dining area to 2:00 a.m., on weekends (Friday and Saturday nights); require the use of the valet parking on an as-needed basis only; and waiver of a portion of the required parking and allowing the introduction of patron dancing within the interior of the restaurant but denying the removal tables and chairs within the outdoor dining area on week nights (Sunday to Thursday nights).

AYES: Ameri, Brown, Hillgren, Kramer and Lawler
NOES: Myers and Tucker

VIII. STAFF AND COMMISSIONER ITEMS

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IX. ADJOURNMENT

CITY OF NEWPORT BEACH
PLANNING COMMISSION STAFF REPORT

September 19, 2013 Meeting
Agenda Item 2

SUBJECT: 216 Crystal Variance - (PA2013-118)
216 Crystal Avenue
▪ Variance No. VA2013-005

APPLICANT: Art Kent

PLANNER: Melinda Whelan, Assistant Planner
(949) 644-3221, mwhelan@newportbeachca.gov

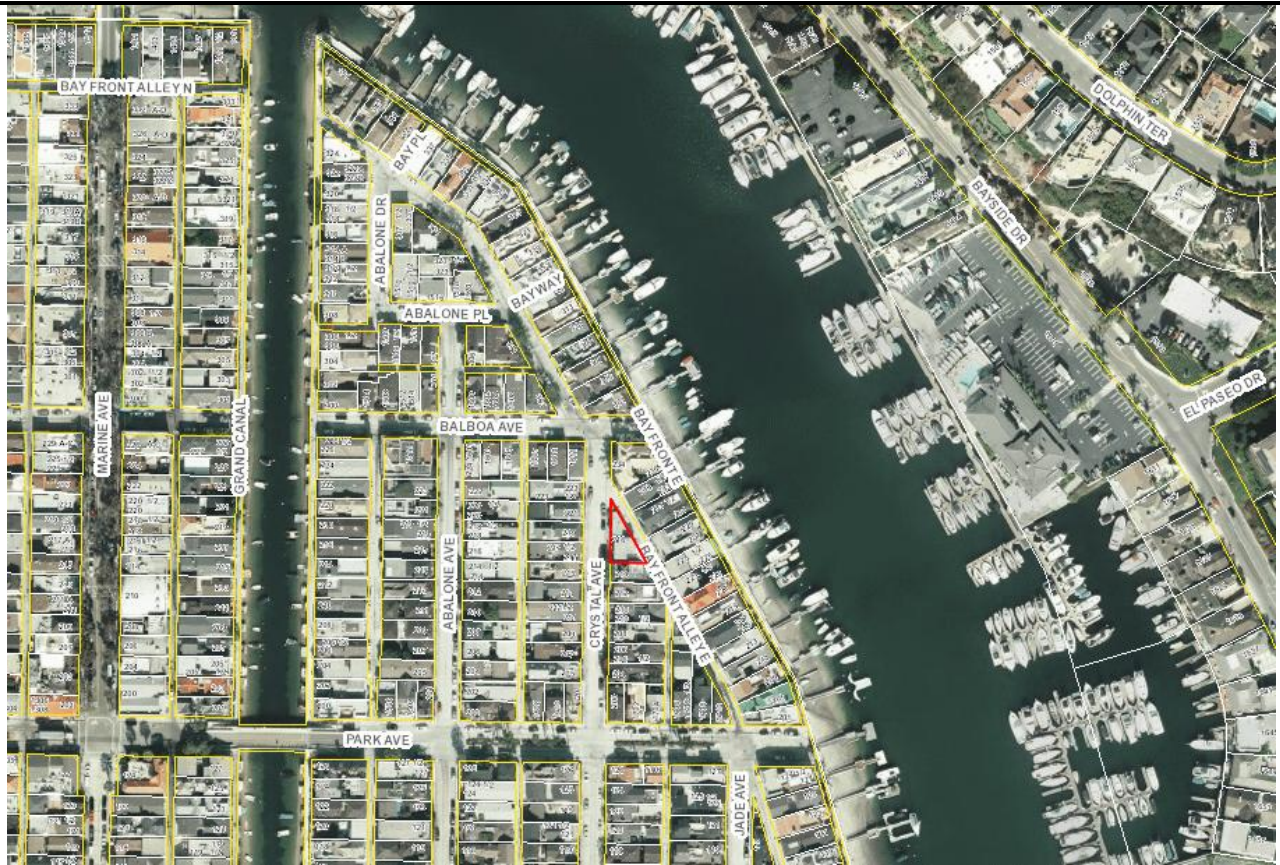
PROJECT SUMMARY

A request for a variance to allow the following improvements to an existing nonconforming duplex: 1) a second story addition which would exceed the maximum allowed floor area; 2) an addition greater than 10 percent of the existing square footage without providing the required number of parking spaces (two garage spaces per unit); and 3) encroachment into the 4-foot side yard setback along E. Bay Front Alley.

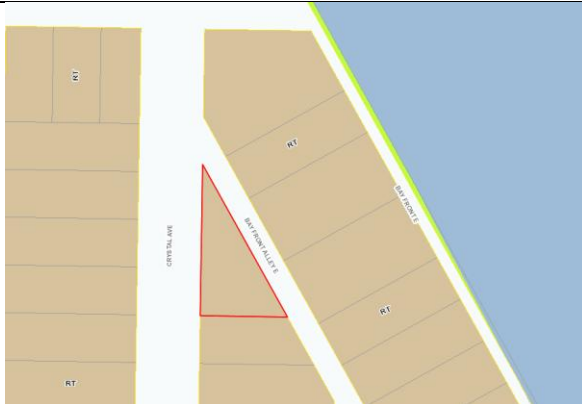
RECOMMENDATION

- 1) Conduct a public hearing; and
- 2) Adopt Resolution No. ____ approving Variance No. VA2013-005 (Attachment No. PC 1).

VICINITY MAP



GENERAL PLAN



ZONING



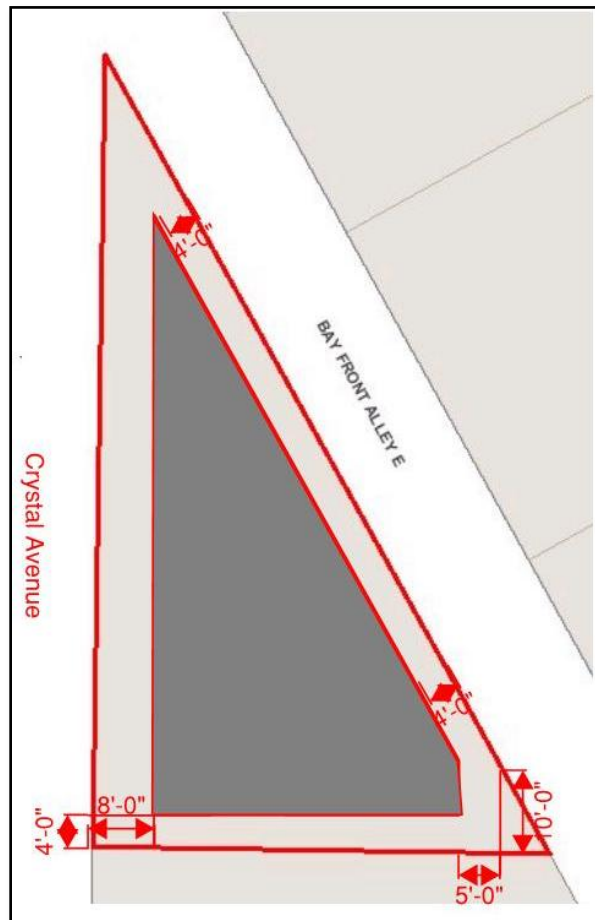
LOCATION	GENERAL PLAN	ZONING	CURRENT USE
ON-SITE	Two-Unit Residential (RT)	Balboa Island (R-BI)	Duplex
NORTH	RT	R-BI	Single-Family Dwelling
SOUTH	RT	R-BI	Single-Family Dwelling
EAST	RT	R-BI	Duplex
WEST	RT	R-BI	Duplex

INTRODUCTION

Project Setting

The subject property is a triangular shaped lot coming to a point at the intersection of Crystal Avenue and E. Bay Front Alley on Little Balboa Island. The property is improved with a 2,417-square-foot, two-story duplex with two-one-car garages. Its triangular shape results in only three property lines: a 94.72-foot front lot line along Crystal Avenue, a 109.65-foot side property line along E. Bay Front Alley, and a 54-foot property line shared with a neighbor to the south. The gross lot area is 2,586 square feet. Figure 1 shows the buildable area (shaded) per the Zoning Code required setbacks.

Figure 1 – Buildable Area and Setbacks of Project Site



The existing duplex, which was permitted in 1951, is nonconforming because it exceeds the maximum allowed floor area by 51 square feet. Additionally, the duplex encroaches into the setbacks as follows: 1 foot into the 8-foot front yard setback on the first floor; 1 foot 6 inches into the side yard setback along E. Bay Front Alley on the first and second floor; and 1 foot into the 4-foot side yard setback to the south. The duplex is also non-

conforming because it provides only a one-car garage for each unit where two spaces per unit are required. Table 1 provides the details of each existing unit.

Table 1 Existing Duplex

	Unit – 1 (downstairs)	Unit – 2 (upstairs)
Floor Area	916 sq. ft. (1 st Floor Only)	308 sq. ft. (1 st Floor) 743 sq. ft. (2 nd Floor)
Bedrooms	1 bedroom	2 bedrooms
Parking	1-car garage	1-car garage

Project Description

The applicant requests a variance to add 378 square feet to the second story of one of the units, encroachment into the side yard setback along E. Bay Front Alley, and maintaining the existing non-conforming parking. The existing duplex exceeds the 2,366-square-foot maximum allowed floor area (including 200 square feet for enclosed garages) by 51 square feet. With the addition, the structure would exceed the maximum by 429 square feet. The addition includes a master bedroom and a balcony on the second floor that would encroach 1foot 6 inches into the side yard setback along the E. Bay Front Alley, consistent with the existing first and second floor. The addition and balcony would maintain the front yard setback of 8 feet.

DISCUSSION

Analysis

General Plan, Local Coastal Plan, and Zoning Code

The Land Use Element of the General Plan designates the subject property for Two-unit Residential (RT) uses. The RT category applies to a range of two-family residential dwelling units such as duplexes and townhomes, but also permits single-family dwellings. The Coastal Land Use Plan designates the subject property as High Density Residential (RH-A), 20.1-30 Dwelling Units/Acre. Two-family dwellings are permitted within this designation. The subject property is located within the R-BI (Balboa Island) Zoning District. The R-BI District allows for single-family and two-family dwelling units. The proposed project will conform to all the required zoning regulations of the R-BI zoning district, with the exception of the increased floor area requested, the existing nonconforming parking and the existing and proposed encroachments into the setbacks.

Floor Area Variance

The Zoning Code permits structures within the R-BI District to have a total gross floor area equal to 1.5 times the buildable area. The buildable area of a lot is the lot area minus the area of required setbacks. Section 20.18.030 of the Zoning Code excludes 200 square feet of floor area used for enclosed parking of two or more spaces within the

R-BI District from the calculation of the gross floor area. Using this formula, the maximum allowable gross floor area for the subject lot is 2,166 square feet plus 200 square feet for an enclosed garage for a total of 2,366 square feet. The existing duplex has a floor area of 2,417 square feet including two single-car garage spaces. Figure 2 shows the block of the subject property with lots 204 through 210 Crystal Avenue considered typical lots.

Figure 2 - Arial of Block



Table 2 shows how the setbacks impact the floor area to land area ratios for the subject lot and other lots in the vicinity.

Table 2 Floor Area and Setback Comparison

	Subject Lot Required	Typical Lot in the Block¹	Proposed
Front Setback (Crystal); and Front Setback Area	8 ft.; 758 sq. ft.	8 ft.; 240 sq. ft.	7 ft. existing. Proposed 8 ft. for 2 nd floor addition and balcony. Bay window encroaching per Code.
Side Setback (E. Bay Front Alley)	4 ft. (Lot is wider than 40')	3 ft. (Less than 40' wide)	2 ft. 6 in. proposed for addition and balcony consistent with existing nonconforming setback.
Side Setback (south)	4 ft. (Lot is wider than 40')	3 ft. (Less than 40' wide)	3 ft. existing nonconforming (No change)
Rear Setback (E. Bay Front Alley)	5 ft.	5 ft.	5 ft. (No change)
Gross Lot Area	2,586 sq. ft.	2,550 sq. ft.	No change
Buildable Area	1,444 sq. ft.	1,728 sq. ft.	No change
Maximum Floor Area (Buildable Area x 1.5)	2,166 sq. ft. ²	2,592 sq. ft. ²	2,595 sq. ft. ¹
Floor Area to Land Area Ratio	0.84	1.02	1.00

(1) Typical lot dimensions are 30' x 85'

(2) Excluding the 200 square foot floor area exception for providing two or more enclosed parking spaces within the R1.5 District.

The triangular shaped lot creates an exceptionally long, approximately 95-foot front lot line along Crystal Avenue resulting in an unusually large 758-square-foot front setback area. This front setback area is more than three times the size of a typical lot within the block which have a 240-square-foot front setback area. This is also an unusually large setback area for Balboa Island. On triangular lots, as discussed previously, a rear lot line is created where there is a minimum width of at least 10 feet and then the rear yard setback is measured from this line thus further reducing the buildable area of the lot. Also, due to the shape, there are areas created that are unusable for enclosed floor area. The large front setback area, combined with the unusual shape of the lot, results in what a disproportionate reduction in buildable area when compared to a typical rectangular shaped lot.

On prior occasions, the Planning Commission assessed the “floor area ratio” (FAR) to determine an appropriate floor area for variance requests for unusually sized and shaped lots. Strict application of the Zoning Code requirement of the 1.5 floor area limit to the subject site allows a maximum of 2,166 gross square feet, which results in a FAR of 0.84 (excluding the 200 square foot allowance for garages). The FAR of a typical lot within the block is 1.02 (excluding the 200 square foot allowance for garages). The existing duplex exceeds the maximum floor area by 51 square feet and has an existing FAR of 0.86 (excluding the 200 square foot allowance for garages). The applicant’s requested variance to add 378 square feet to one of the existing units creates a floor area of 2,595 square feet (excluding the 200 square foot floor area exception for providing two enclosed parking spaces) and results in a 1.00 FAR, which is consistent with the typical lots within the vicinity (block). The proposed structure would not be out of proportion to the other dwellings within the immediate neighborhood and throughout Balboa Island. Table 3 details recent variances granted on Balboa Island.

Table 3 Floor Area Variance Comparisons

	216 Crystal (Subject)	212 Crystal (2007)	201 Crystal (2007)	201 Apolena (2002)	303 Crystal (1993)
Gross Lot Area	2,586 sq. ft.	2,406.9 sq. ft.	1,500 sq. ft.	2,400 sq. ft.	1,675 sq. ft.
Buildable Area	1,444 sq. ft.	1609.6 sq. ft.	570 sq. ft.	950 sq. ft.	1,223 sq. ft.
Maximum Floor Area	2,166 sq. ft. ¹	2,414 sq.ft. ¹	855 sq. ft. ¹	1,625 sq. ft.	1,834.5 sq. ft.
Floor Area Permitted by Variance	2,595 sq. ft. + 200 sq. ft. ² = 2,795 sq. ft. (Proposed)	2,458 sq. ft. + 200 sq. ft. ² = 2,658 sq. ft. (VA2006-001)	1,560 sq. ft. + 200 sq. ft. ² = 1,760 sq. ft. (VA2002-001)	2,295 sq. ft. +200 sq. ft. ² = 2,495 sq.ft. (VA2002-001)	1,738 sq. ft. + 200 sq. ft. ² = 1,938 sq. ft. (VA No. 1186)
Floor Area Ratio Per Variance	1.00	1.02	1.04	1.04	1.16

(1) Per Section 20.10.030(M) 2 of the Zoning Code, 200 square feet of floor used for enclosed parking of two or more spaces within the R1.5 District shall not be included in the calculation of the gross floor area.

(2) Subject to a variance for the increased floor area.

Exceed 10 Percent Addition – Nonconforming Parking

The nonconforming parking section of the Zoning Code, Section 20.38.060, allows existing development with less than the required parking to add up to 10 percent of the existing square footage as long as the gross floor area does not exceed the maximum allowed by the Zoning Code. Section 20.38.060 is intended to allow the addition of bedrooms or small expansions that do not intensify the use of existing dwellings. However, since the existing square footage exceeds Zoning Code maximum by 51 square feet, the proposed addition requires that the parking also be addressed by the Variance. The existing duplex has maintained a one-car garage for each unit since 1951. The irregularly shaped buildable

area limits the ability to create additional parking without completely removing the first-floor unit. The addition is a 15.6 percent increase of the existing gross floor area.

Side Yard Encroachment along E. Bay Front Alley

The existing duplex was built with a 2-foot-6-inch setback along E. Bay Front Alley. A variance is required for the proposed second-floor addition to maintain this setback. The triangular shaped lot and unusually large front-yard setback area results in limited buildable area; therefore, this encroachment is justified in providing living conditions consistent with modern living standards. The existing and proposed encroachment does not abut another residential development; therefore, adequate light, air, and separation is maintained. The 2-foot-6-inch setback allows sufficient vehicular access for two-direction travel within the alley and access to garages for the adjacent residential units.

Variance Findings

Section 20.52.090.F (Variances, Findings and Decision) of the Zoning Code requires the Planning Commission to make the following findings before approving a variance:

- A. *There are special or unique circumstances or conditions applicable to the subject property (e.g., location, shape, size, surroundings, topography, or other physical features) that do not apply generally to other properties in the vicinity under an identical zoning classification;*
- B. *Strict compliance with Zoning Code requirements would deprive the subject property of privileges enjoyed by other properties in the vicinity and under an identical zoning classification;*
- C. *Granting of the Variance is necessary for the preservation and enjoyment of substantial property rights of the applicant;*
- D. *Granting of the Variance will not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and in the same zoning district;*
- E. *Granting of the Variance will not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood; and*
- F. *Granting of the Variance will not be in conflict with the intent and purpose of this Section, this Zoning Code, the General Plan, or any applicable specific plan.*

The subject lot is an irregular shaped, triangular lot which results in a smaller and limited buildable area as compared to typical lots within the block and the Balboa Island neighborhood. The triangular shape results in an exceptionally long, 94.72-foot front lot

line along Crystal Avenue and unusually large 758-square-foot front setback area. This front setback area is more than three times that of a typical lot with a 240-square-foot front setback area. The irregular shape and large setback results in a buildable area of 1,444 square feet where a typical lot in the block has 1,728 square feet; and a FAR that is 0.84 (excluding the 200-square-foot allowance for garages) where a typical lot in the block has an FAR of 1.02 (excluding the 200-square-foot allowance for garages). The requested variance to exceed the 1.5 floor area limit for a duplex that has a floor area of 2,595 square feet (excluding the 200-square-foot allowance for garages) results in a 1.00 FAR, which is less than typical lots within the block. It allows the property the right to maintain the duplex with a similar FAR to other residential development on Balboa Island.

The unusual shape of the lot with the strict application of the 8-foot front yard setback along the approximately 95-foot lot line along Crystal Avenue and the 4-foot side yard setback along E. Bay Front Alley limits the buildable area to accommodate usable enclosed floor area and outdoor areas. The second story addition maintains the existing 2-foot, 6-inch setback and is not abutting a residential lot; therefore, providing adequate light, air, and separation. The encroachment provides usable floor area and outdoor living area while maintaining the existing adequate access for two-way direction of travel in the alley and garage access for the residents in the surrounding area. The proposed encroachment does not result in a special privilege because a typical lot within the block enjoys a 24-foot wide rear yard setback abutting alley of which they can encroach into with a second floor up to 2 feet 6 inches from the property line by right per the Zoning Code.

The existing duplex was built in 1951 with one-car garages for each unit. The irregularly shaped buildable area prohibits the ability to create additional parking without completely removing the first-floor unit, Unit-1. For a typical lot on Balboa Island that is developed with a duplex constructed per an old Zoning Code requirement of one garage space per unit, a 10 percent addition is permitted up to the maximum square footage allowed. Additions within the 10 percent often accommodate a room addition.

The addition and the existing duplex meet the height limits of the R-BI Zoning Designation. The requested Variance is consistent with the intent of the Zoning Code and the General Plan because the proposed deviations from the Zoning Code allow for the maintenance of an existing duplex with a comparable FAR to other properties within the block and neighborhood of Balboa Island. The addition maintains the design of the existing duplex that provides usable open volume area, articulation and modulation resulting in bulk that is consistent with other properties in the block and neighborhood of Balboa Island. The addition of the master bedroom is comparable to additions that are provided for by right within the Zoning Code for existing duplexes of a similar size that have less than the required number of parking spaces. Staff, therefore, recommends Planning Commission approval based on the discussion and facts above and findings included in the draft resolution. Conditions of approval have been incorporated into the attached draft resolution (Attachment No. PC 1).

Alternatives

1. The Planning Commission may suggest specific changes that are necessary to alleviate concerns. If any additional requested changes are substantial, the item should be continued to a future meeting to allow a redesign or additional analysis. Should the Planning Commission choose to do so, staff will return with a revised resolution incorporating new findings and/or conditions.
2. If the Planning Commission believes that there are insufficient facts to support the findings for approval, the Planning Commission must deny the application and provide facts in support of denial to be included in the attached draft resolution for denial (Attachment No. PC 2).

Environmental Review

The project categorically exempt under Section 15301 of the California Environmental Quality Act (CEQA) Guidelines - Class 1 (Existing Facilities) of the implementing Guidelines of the California Environmental Quality Act as the project is an addition to an existing structure and is located on a developed site with no environmentally significant resources present.


Public Notice

Notice of this application was published in the Daily Pilot, mailed to all owners of property within 300 feet of the boundaries of the site (excluding intervening rights-of-way and waterways) including the applicant and posted on the subject property at least 10 days before the scheduled meeting, consistent with the provisions of the Municipal Code. Additionally, the item appeared on the agenda for this meeting, which was posted at City Hall and on the City website.

Prepared by:


Melinda Whelan
Assistant Planner

Submitted by:


Brenda Wisneski, AICP, Deputy Director

ATTACHMENTS

- PC 1 Draft Resolution for Approval
- PC 2 Draft Resolution for Denial
- PC 3 Project Plans Including Color Renderings

Attachment No. PC 1

Draft Resolution

RESOLUTION NO.

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH APPROVING VARIANCE NO. VA2013-005 FOR AN ADDITION TO AN EXISTING DUPLEX LOCATED AT 216 CRYSTAL AVENUE PA2013-216

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Art Kent, with respect to property located at 216 Crystal Avenue, and legally described as Lot 9, Block 5 requesting approval of a Variance.
2. The applicant requests a variance to allow the following improvements to a nonconforming duplex with an existing square footage of 2,417 square feet: 1) a second story addition of 378 square feet which would exceed the maximum allowed floor area of 2,366 square feet; 2) an addition greater than 10 percent of the existing square footage and beyond the maximum allowed square footage without providing the required number of parking spaces (2 per unit in a garage); and 3) a 1-foot-6-inch encroachment into the 4-foot side yard setback along East Bay Front Alley.
3. The subject property is located within the Balboa Island (R-BI) Zoning District and the General Plan Land Use Element category is Two-Unit Residential (RT).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is High Density Residential (RH-A), 20.1-30 Dwelling Units/Acre.
5. A public hearing was held on September 19, 2013, in the Council Chambers at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt under Section 15301 of the California Environmental Quality Act (CEQA) Guidelines – Class 1 (Existing Facilities).
2. The project is an addition to an existing structure that is less than 50 percent of the existing structure and is located on a developed site with no environmentally significant resources present.

SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.52.090 F. of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

A. There are special or unique circumstances or conditions applicable to the subject property (e.g., location, shape, size, surroundings, topography, or other physical features) that do not apply generally to other properties in the vicinity under an identical zoning classification; and

Facts in Support of Finding:

1. The subject lot is an irregular triangular shaped lot which results in a smaller and unusually shaped buildable area from that of typical lots within the block and the Balboa Island neighborhood.
2. The irregular triangular shaped lot results in an exceptionally long, 94.72-foot front lot line along Crystal Avenue and an unusually large 758-square-foot front setback area. This front setback area is more than three times that of a typical lot with a 240-square-foot front setback area.
3. The irregular shape with the unusually large setback results in a buildable area of 1,444 square feet where a typical lot in the block has 1,728 square feet; and a FAR that is 0.84 where a typical lot in the block has an FAR of 1.02.
4. The irregular shape creates an unusual shape of buildable area which is difficult to provide enclosed floor area and usable outdoor living area without encroaching into the setback as proposed to be consistent with the existing structure.
5. The existing duplex was built in 1951 with one-car garages for each unit. The irregularly shaped buildable area and prohibits the ability to create additional parking without eliminating the habitable area of the first floor unit.

Finding:

B. Strict compliance with Zoning Code requirements would deprive the subject property of privileges enjoyed by other properties in the vicinity and under an identical zoning classification; and

Facts in Support of Finding:

1. Applying the 8-foot front yard setback requirement along the unusually long, approximately 95-foot front lot line results in a larger setback area and smaller buildable area than a typical lot within the block and within the Balboa Island neighborhood. Strict application of the Zoning Code required floor area limit (FAL =

buildable area X 1.5) to the subject property allows a maximum area of 2,166, which results in a FAR of 0.84 (excluding the 200 square foot allowance for garages on Balboa Island). The allowed FAR of a typical lot with a 240-square-foot front yard setback within the same block is 1.02 (excluding the 200-square-foot allowance for garages).

2. Additionally, the unusual shape of the lot with the strict application of the 8-foot front yard setback along the approximately 95-foot lot line along Crystal Avenue and the 4-foot side yard setback along E. Bay Front Alley limits the buildable area adequate to accommodate usable enclosed floor area as well as usable outdoor areas. The addition and balcony maintains the existing 2-foot-6-inch setback and is not abutting a residential lot therefore providing adequate light, air, and separation. Furthermore, the encroachment provides usable floor area and outdoor living area and maintains adequate access for 2-way direction of travel in the alley and garage access for the residents in the surrounding area.
3. The existing duplex was permitted in 1951 to provide 1-car garage per unit, per the Zoning Code in affect at that time. Unit-1 occupies the majority of the first floor with one bedroom and 916 square feet. For a typical lot on Balboa Island that is developed with an existing duplex constructed per an old Zoning Code requirement of one garage space per unit, a 10 percent addition is permitted up to the maximum square footage allowed by the Zoning Code. Additions within the 10 percent often accommodate a room addition.

Finding:

C. Granting of the Variance is necessary for the preservation and enjoyment of substantial property rights of the applicant; and

Facts in Support of Finding:

1. The unusually large setback area and unusual triangular shape is not typical of other lots within the block or on Balboa Island and significantly limits the floor area and buildable area.
2. The requested variance to exceed the 1.5 floor area limit for a duplex that has a floor area of 2,595 square feet (excluding the 200 square feet allowed for garages) results in a 1.00 FAR, which is consistent with the typical lots within the block and allows the property the right to maintain the duplex with a similar FAR to other residential development on Balboa Island.
3. The proposed encroachment into the side yard setback, consistent with the existing structure, is reasonable in this case due to the unusual triangular shape that limits the buildable area. The encroachment would afford the property owner a more usable buildable area.

4. The duplex has existed since 1951 with a one-car garage for each unit. The existing structure and lot characteristics provide no additional area on the first floor to add more parking without removing Unit-1.

Finding:

D. Granting of the Variance will not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and in the same zoning district; and

Facts in Support of Finding:

1. The FAR is a method to compare the maximum square footage allowed on a site based on the lot size. Using an FAR comparison to determine the appropriate maximum square footage allowed on a site provides equity for sub-standard lots without granting a special privilege. The proposed floor area results in an FAR of 1.00 (excluding the 200 square feet allowed for garages), which is less than the 1.02 FAR of typical lots within the block, ensuring that the increased floor area does not result in a special privilege not enjoyed by other property owners in the vicinity.
2. The proposed side yard setback along E. Bay Front Alley of 2 feet 6 inches is consistent with the existing structure does not result in a special privilege because a typical lot within the block enjoys a 24-foot-wide rear yard setback abutting the alley of which an encroachment to within 2 feet 6 inches of the property line is allowed on the second floor by right. Additionally, the side yard is not abutting a residential lot as do the typical side yards within the block.
3. The existing duplex has been maintained with only a one-car garage for each unit since 1951. For a typical lot on Balboa Island that is developed with a duplex constructed per an old Zoning Code requirement of one garage space per unit, a 10 percent addition is permitted up to the maximum square footage allowed. Additions within the 10 percent often accommodate a room addition.

E. Granting of the Variance will not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood; and

Facts in Support of Finding:

1. The size of the duplex with the proposed addition is proportionate to other single-family and duplexes within the block and neighborhood of Balboa Island.
2. The proposed addition that encroaches 1 foot 6 inches into the side yard setback along E. Bay Front Alley still provides 2 feet 6 inches in line with the existing structure that is an adequate setback consistent with the neighborhood pattern of

development ensuring the protection of air, light, and separation with adjacent properties.

3. The proposed encroachment is abutting an alley and it does not inhibit circulation or access of the subject lot or of lots across the alley.
4. The design of the structure includes articulation, modulation, and open volume with an existing balcony and a new balcony.
5. Duplexes within the Balboa Island neighborhood were typically built with one-car garages for each unit, were built with smaller than your average dwelling unit, and are typically afforded small one-room additions, per the non-conforming section of the Zoning Code, that are not considered as detrimental to the neighborhood.

F. Granting of the Variance will not be in conflict with the intent and purpose of this Section, this Zoning Code, the General Plan, or any applicable specific plan.

Facts in Support of Finding:

1. The intent of floor area limits (FAL) is to ensure each residential structure can be developed with a reasonable sized dwelling in relationship to the lot size and setbacks; however, in this case, utilizing the FAL disproportionately reduces the buildable area on this lot due to the irregular triangular shape and the larger front yard setback requirement. Additional floor area above the allowed FAL, would provide for the construction of a master bedroom addition that allows the existing duplex to be consistent with other developments within the block and within the Balboa Island neighborhood.
2. The intent of the side yard setback is to provide adequate separation for light, air, and usable outdoor living space adjacent to other residential properties. The proposed 2-foot-6-inch setback along E. Bay Front Alley leaves adequate separation for light, air as it is abutting the alley and is not a typical side that abuts a residential development. On Balboa Island, most properties have a 24-foot-long, 5-foot-deep rear yard setback abutting the alley which, per the Zoning Code a second floor can cantilever to within 2 feet 6 inches of the property line. The encroachment also allows the proposed balcony to create usable outdoor living space within the irregularly shaped area.
3. The addition and the existing duplex meet the height limits of the R-BI Zoning Designation.
4. The requested Variance is consistent with the intent of the Zoning Code and the General Plan because the proposed deviations from the Zoning Code allow for the maintenance of an existing duplex with a comparable FAR to other properties within the block and neighborhood of Balboa Island. The addition maintains the design of the existing duplex that provides usable open volume area, articulation and modulation resulting in bulk that is consistent with other properties in the block

and neighborhood of Balboa Island. The addition of the master bedroom is comparable to additions that are provided for by right within the Zoning Code for existing duplexes of a similar size that have less than the required number of parking spaces.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Planning Commission of the City of Newport Beach hereby approves Variance No. VA2013-005, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective 14 days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED AND ADOPTED THIS 19th DAY OF SEPTEMBER, 2013.

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: _____
Bradley Hillgren, Chairman

BY: _____
Kory Kramer, Secretary

EXHIBIT "A"**CONDITIONS OF APPROVAL****PLANNING**

1. The development shall be in substantial conformance with the approved site plan, floor plans, and building elevations stamped and dated with the date of this approval. (Except as modified by applicable conditions of approval.)
2. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. The master bedroom addition and balcony shall maintain the 8-foot front yard setback and shall not encroach further than the existing structure into the E. Bay Front Alley side yard setback maintaining 2 feet 6 inches to the property line.
4. The gross square footage including the garages with the addition of the master bedroom shall not exceed 2,795 square feet.
5. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
6. A copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
7. Prior to issuance of building permits, the applicant shall submit to the Planning Division an additional copy of the approved architectural plans for inclusion in the Variance file. The plans shall be identical to those approved by all City departments for building permit issuance. The approved copy shall include architectural sheets only and shall be reduced in size to 11 inches by 17 inches. The plans shall accurately depict the elements approved by this Variance and shall highlight the approved elements such that they are readily discernible from other elements of the plans.
8. Prior to issuance of building permits, approval from the California Coastal Commission shall be required.
9. Prior to the issuance of a building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
10. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner, or the leasing agent.

11. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 20 Planning and Zoning of the Newport Beach Municipal Code.
12. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the 216 Crystal Avenue Variance including, but not limited to, the Variance No. VA2013-118. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Building Division Conditions

13. The development shall comply with the Residential Code CRC 2010.
14. The garages shall provide a minimum door opening of 8-feet-wide for car.
15. Building shall be one hour rated construction due to unit overlapping conditions and to include sound rating.
16. For the purpose of fire protection ratings of exterior walls and opening, the center line of the alley may be considered the property line.
17. The development site is subject to liquefaction zone policy and flood Zone; therefore, the structure shall comply with liquefaction and FEMA guideline policy.

Attachment No. PC 2

Draft Resolution for Denial

RESOLUTION NO.

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH DENYING VARIANCE NO. VA2013- 005 FOR AN ADDITION TO AN EXISTING DUPLEX LOCATED AT 216 CRYSTAL AVENUE PA2013-216

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Art Kent, with respect to property located at 216 Crystal Avenue, and legally described as Lot 9, Block 5 requesting approval of a Variance.
2. The applicant requests a variance to allow the following improvements to a nonconforming duplex with an existing square footage of 2,417 square feet: 1) a second story addition of 378 square feet which would exceed the maximum allowed floor area of 2,366 square feet; 2) an addition greater than 10 percent of the existing square footage and beyond the maximum allowed square footage without providing the required number of parking spaces (2 per unit in a garage); and 3) a 1-foot-6-inch encroachment into the 4-foot side yard setback along East Bay Front Alley.
3. The subject property is located within the Balboa Island (R-BI) Zoning District and the General Plan Land Use Element category is Two-Unit Residential (RT).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is High Density Residential (RH-A), 20.1-30 Dwelling Units/Acre.
5. A public hearing was held on September 19, 2013, in the Council Chambers at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt under Section 15301 of the California Environmental Quality Act (CEQA) Guidelines – Class 1 (Existing Facilities).
2. The project is an addition to an existing structure that is less than 50 percent of the existing structure and is located on a developed site with no environmentally significant resources present.

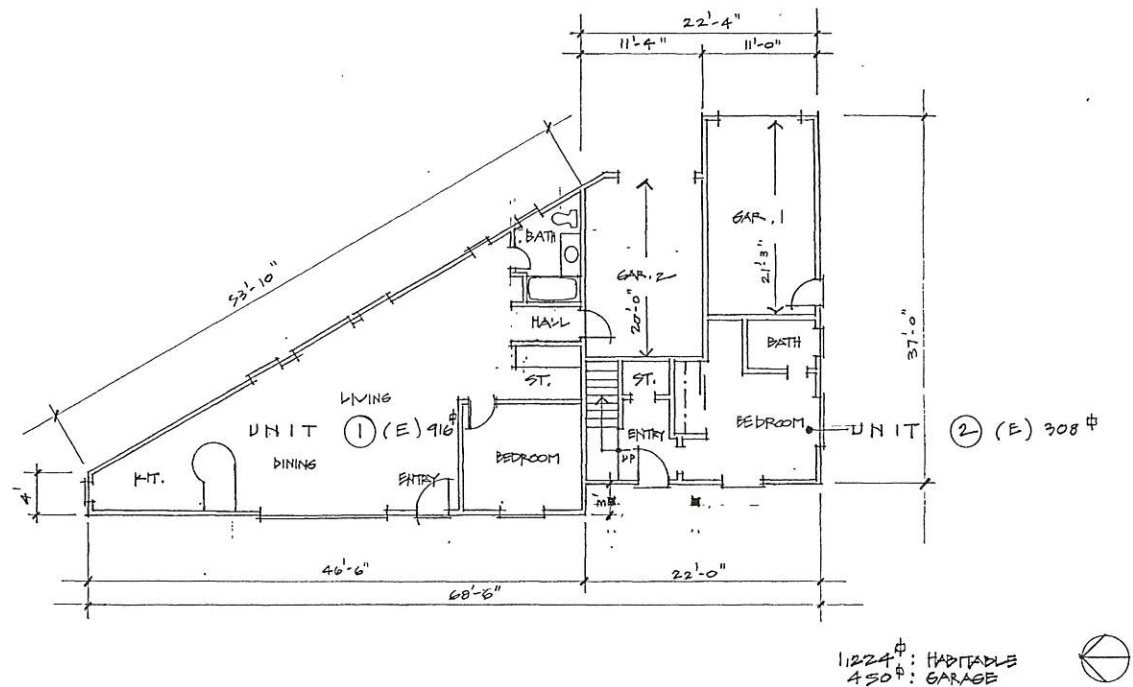
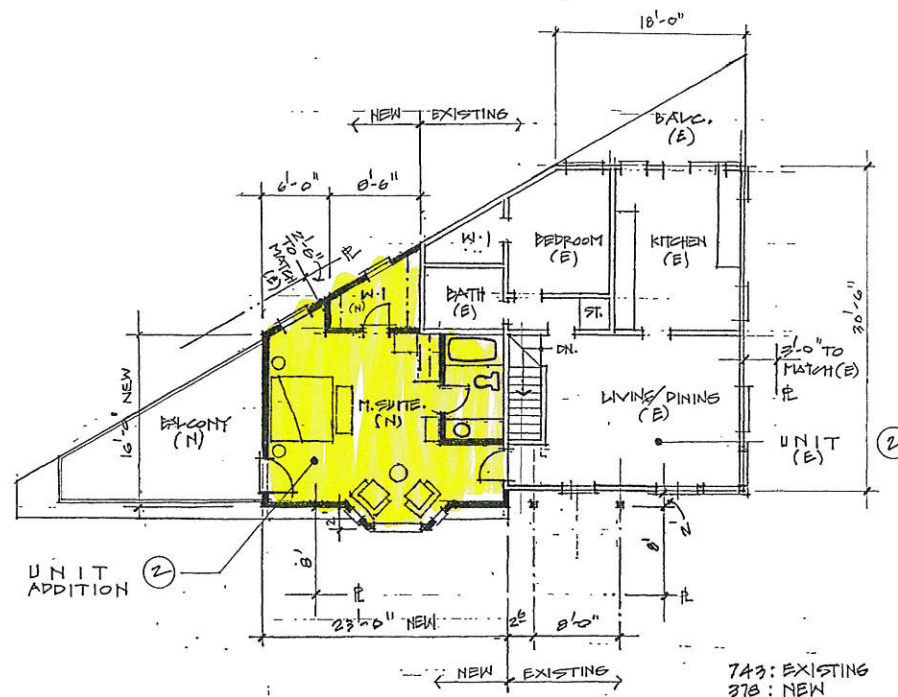
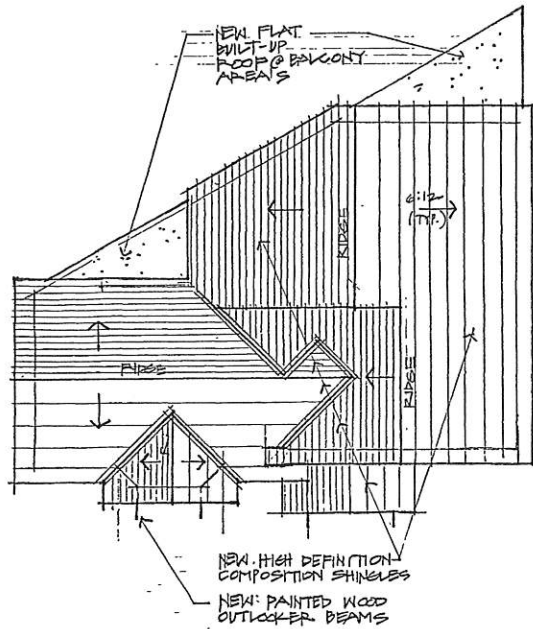
SECTION 3. FINDINGS FOR DENIAL.

The Planning Commission may approve a variance only after making each of the required findings set forth in Section 20.52.090 (Variances). In this case, the Planning Commission was unable to make the required findings based upon the following:

1. The Variance application for the proposed addition to the existing duplex is not consistent with the legislative intent of Title 20 of the Municipal Code and that findings required by Section 20.52.090 are not supported in this case. The proposed project may prove detrimental to the community.
2. The design, location, size, and characteristics of the proposed project are not compatible with the single- or two-unit dwellings in the vicinity. The development may result in negative impacts to residents in the vicinity and would not be compatible with the enjoyment of the nearby residential properties.

Attachment No. PC 3

Plans Including Color Renderings

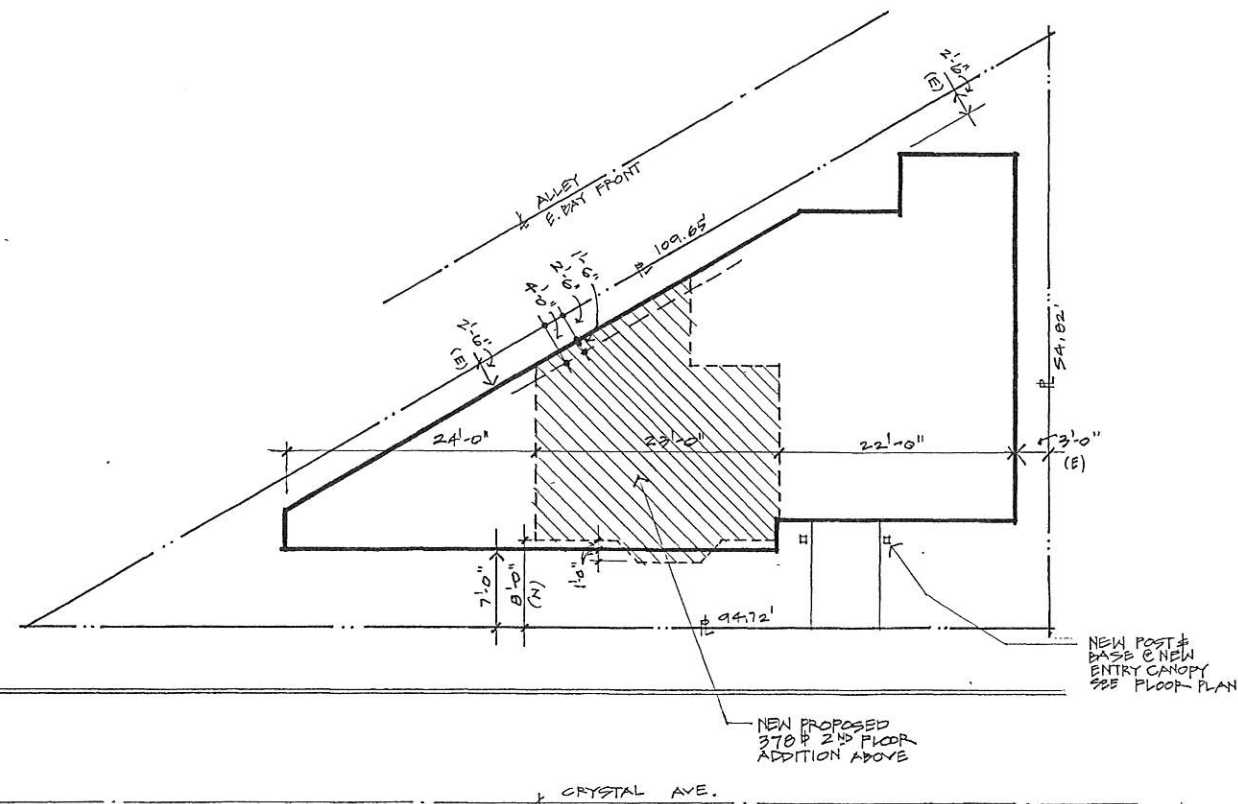
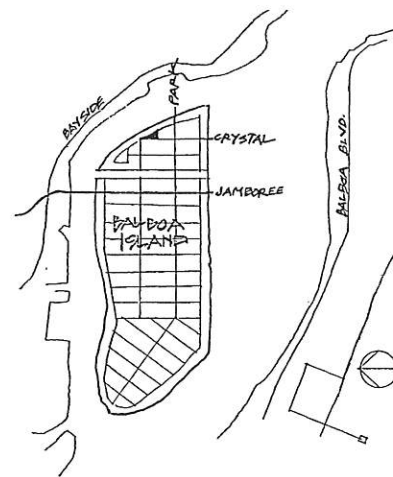


ROOF PLAN

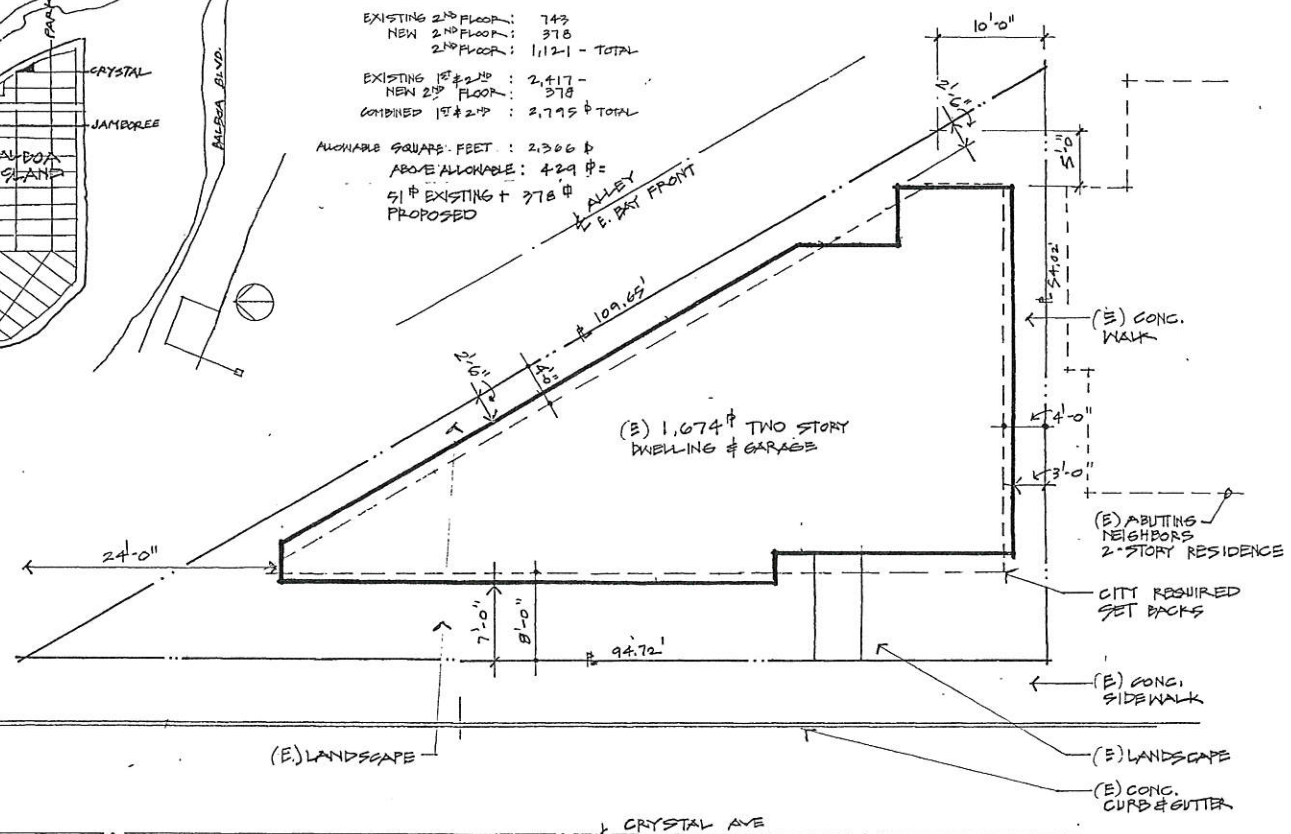
SECOND FLOOR PLAN 1,121: TOTAL

FIRST FLOOR PLAN 1,674: TOTAL (EXISTING)

LOT SIZE: 2,586 \pm
 BUILDABLE AREA: 1,444 \pm
 MAX. ALLOWABLE: $\times 1.5 = 2,166$
 BUILDABLE AREA: 2,366 \pm
 EXISTING 1ST FLOOR: 1,224 \pm HABITABLE
 450 - GARAGE
 EXISTING 1ST FLOOR: 1,674 - TOTAL
 EXISTING 2ND FLOOR: 743
 NEW 2ND FLOOR: 378
 2ND FLOOR: 1,121 - TOTAL
 EXISTING 1ST & 2ND: 2,417 -
 NEW 2ND FLOOR: 378
 COMBINED 1ST & 2ND: 2,795 \pm TOTAL
 AVAILABLE SQUARE FEET: 2,366 \pm
 ABOVE ALLOWABLE: 429 \pm
 51 \pm EXISTING + 378 \pm
 PROPOSED



SITE PLAN (PROPOSED)



SITE PLAN (EXISTING)

SCALE
1/8" = 16'



ARTHUR F. KENT, A.I.A.

702/335-9956

325 A 2nd Street • Huntington Beach
CA 92648

216 CRYSTAL

1

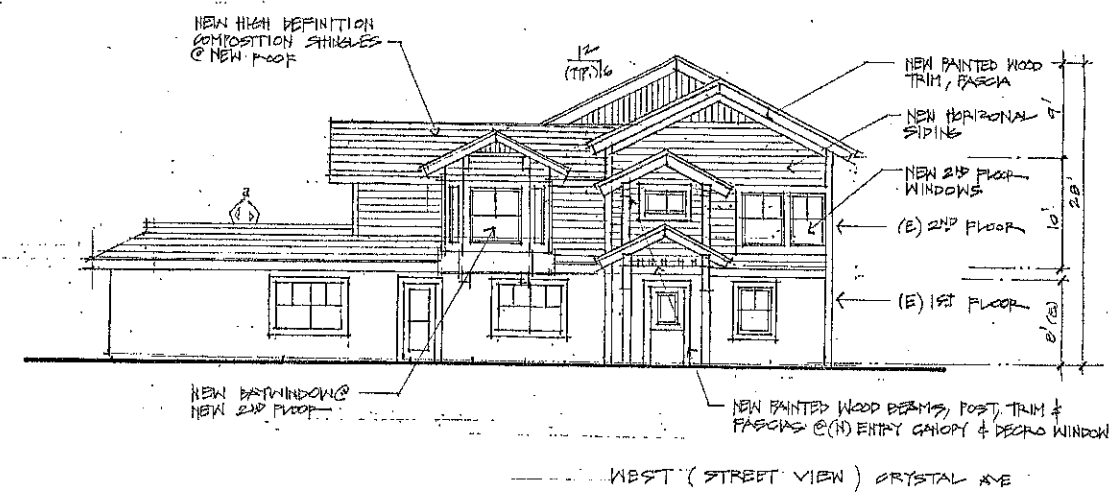
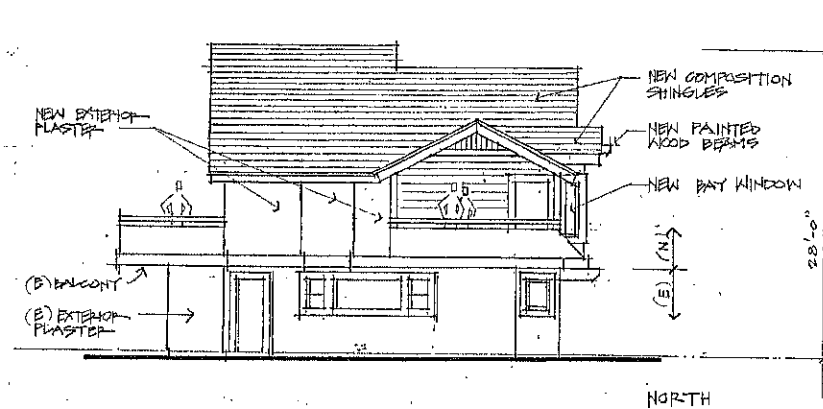
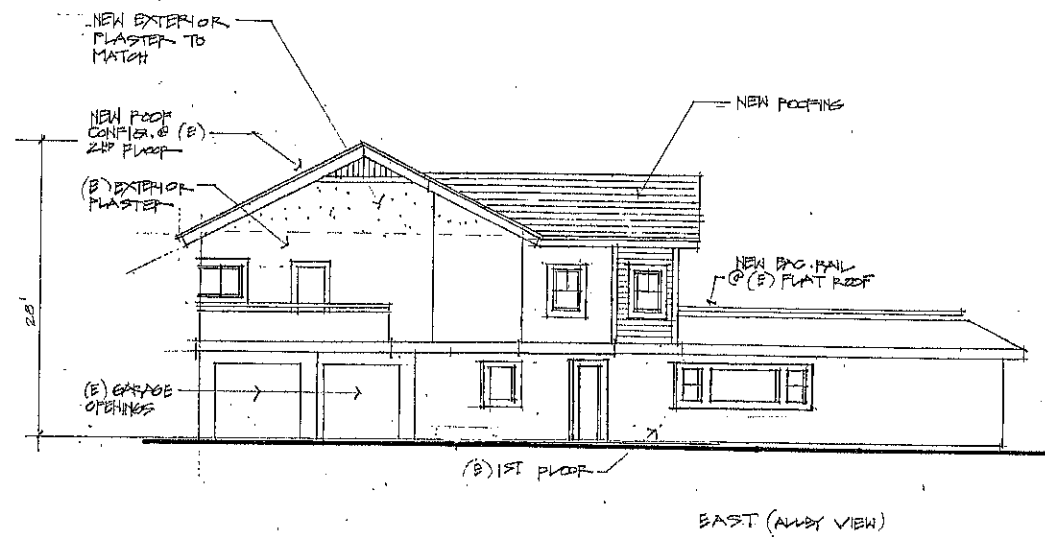
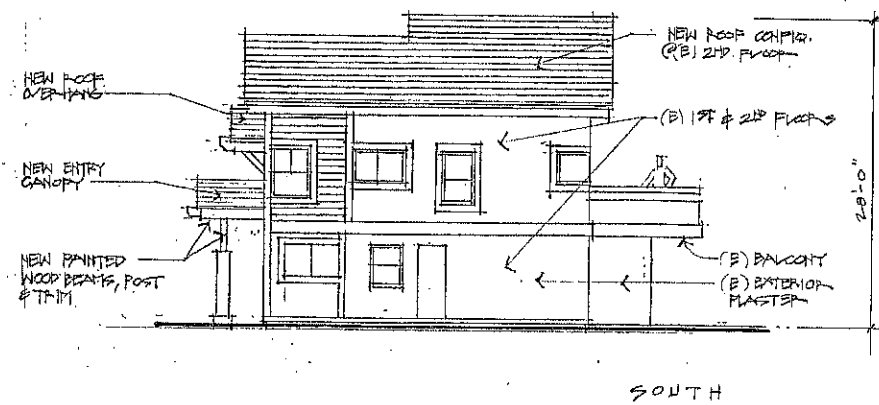


ARTHUR F. KENT, A.I.A.

702/335-9958
333 A 2nd Street • Huntington Beach
CA 92648

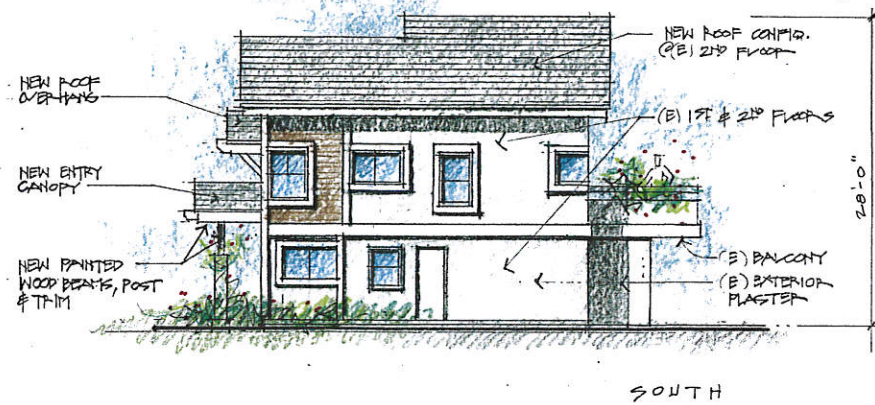
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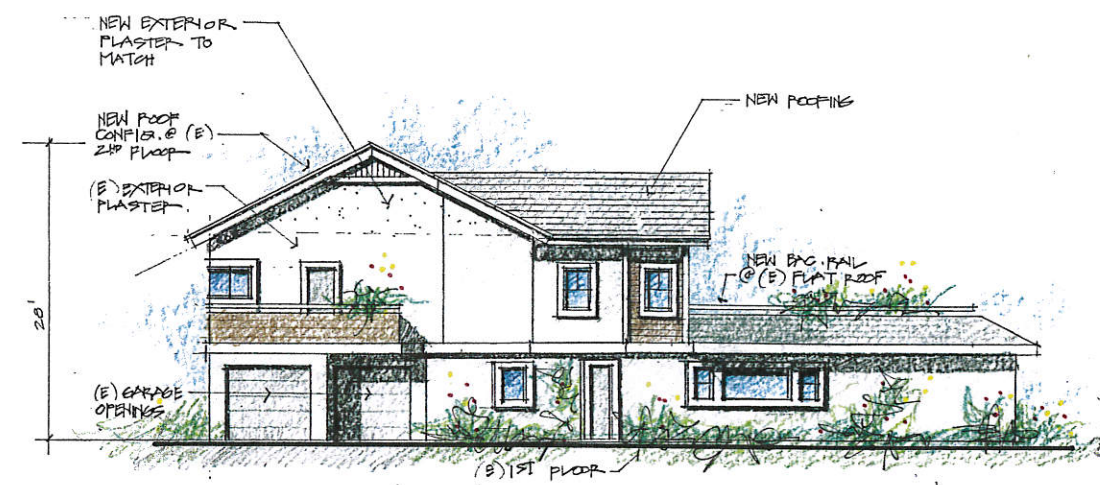


EXTERIOR ELEVATIONS

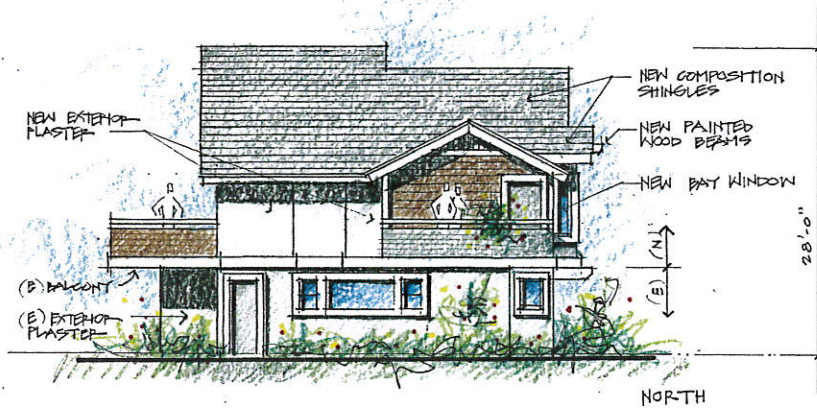
SCALE
1/8" = 1'-0"



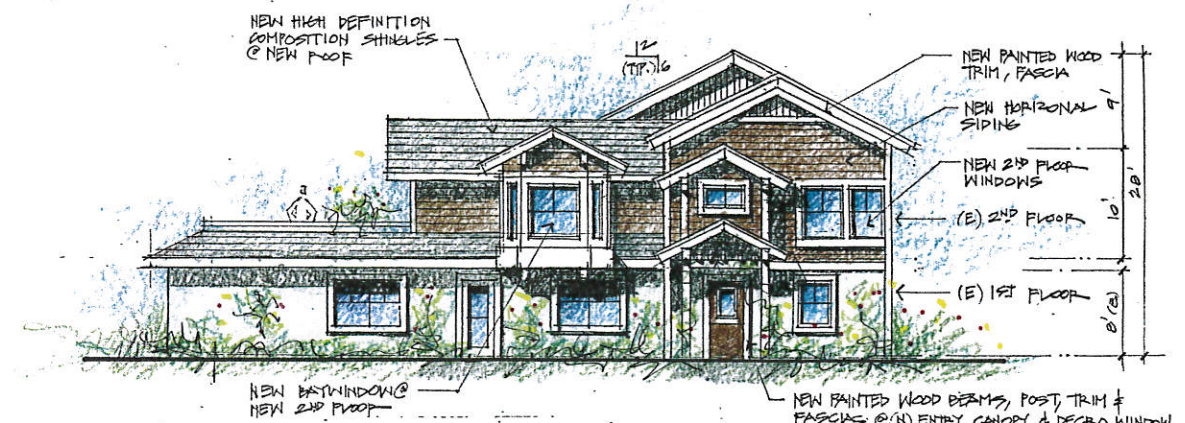
SOUTH



EAST (ALLEY VIEW)

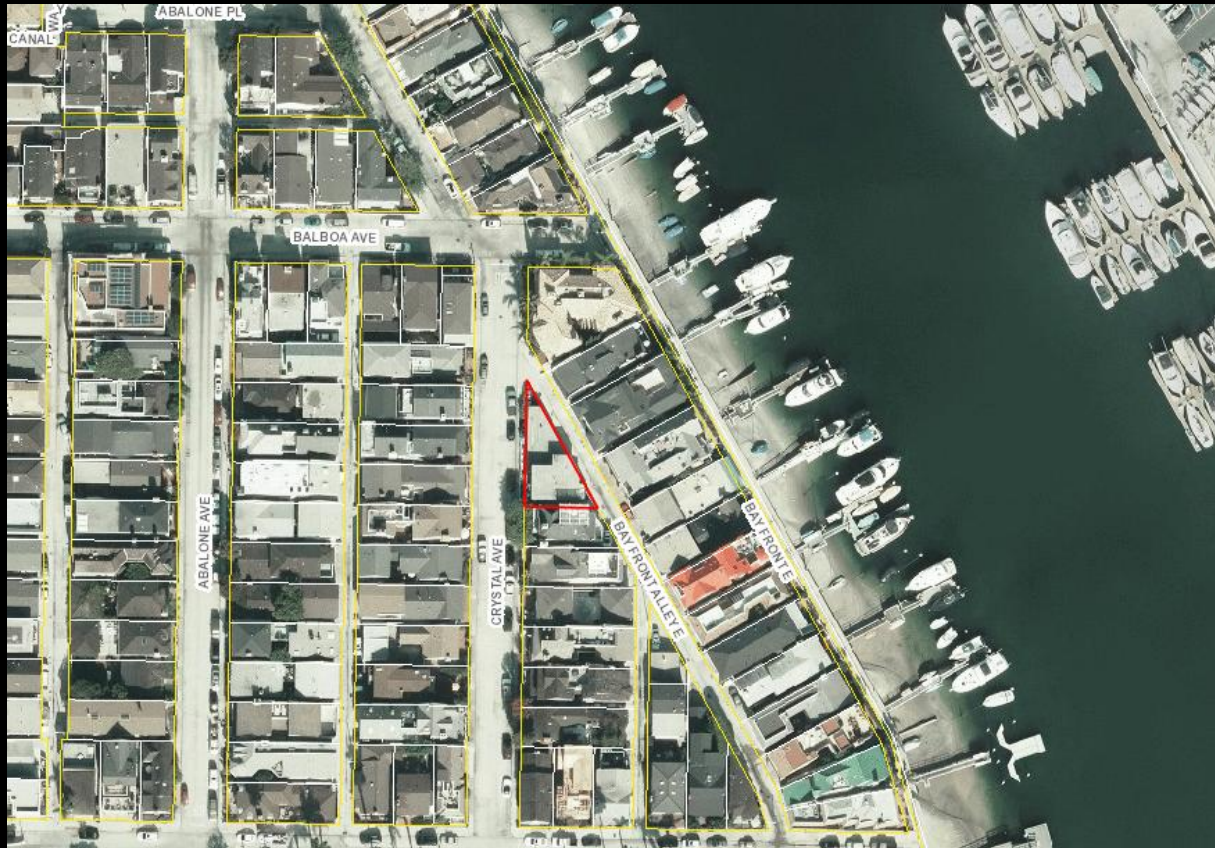


NORTH



WEST (STREET VIEW) CRYSTAL AVE

216 Crystal Avenue Variance



Planning Commission Public Hearing
September 19, 2013



Introduction



- Addition of 378 square foot master bedroom
- Variance
 - Exceed floor area by 429 sq. ft. (2,366 sq. ft.)
 - Encroach 1 foot 6 inches into side setback - line-up with existing structure
 - Existing parking – 1 car garage for each unit

Comparison to Typical Lot

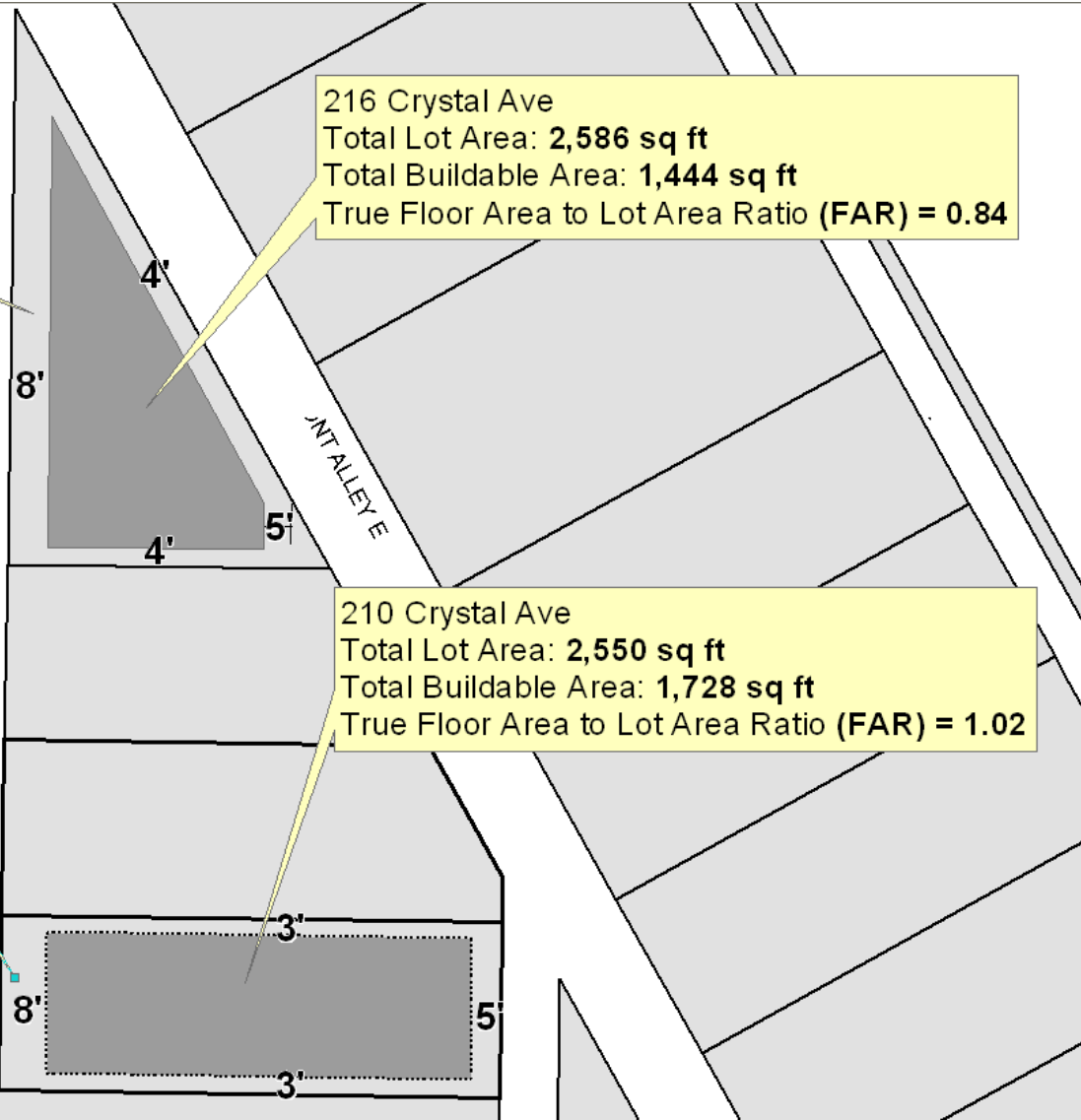


216 Crystal Ave
Front Set Back Area: 758 sq_ft

216 Crystal Ave
Total Lot Area: 2,586 sq ft
Total Buildable Area: 1,444 sq ft
True Floor Area to Lot Area Ratio (FAR) = 0.84

210 Crystal Ave (Typical Lot Size)
Front Set Back Area: 240 sq_ft

210 Crystal Ave
Total Lot Area: 2,550 sq ft
Total Buildable Area: 1,728 sq ft
True Floor Area to Lot Area Ratio (FAR) = 1.02



Facts



- Front yard setback area > 3 times the typical front yard
- 1.00 FAR is less than typical lot (1.02)
 - recent approvals of 1.04 FAR
- Setback in-line with existing structure
 - maintains adequate access and circulation
- One-car garage provided for each unit

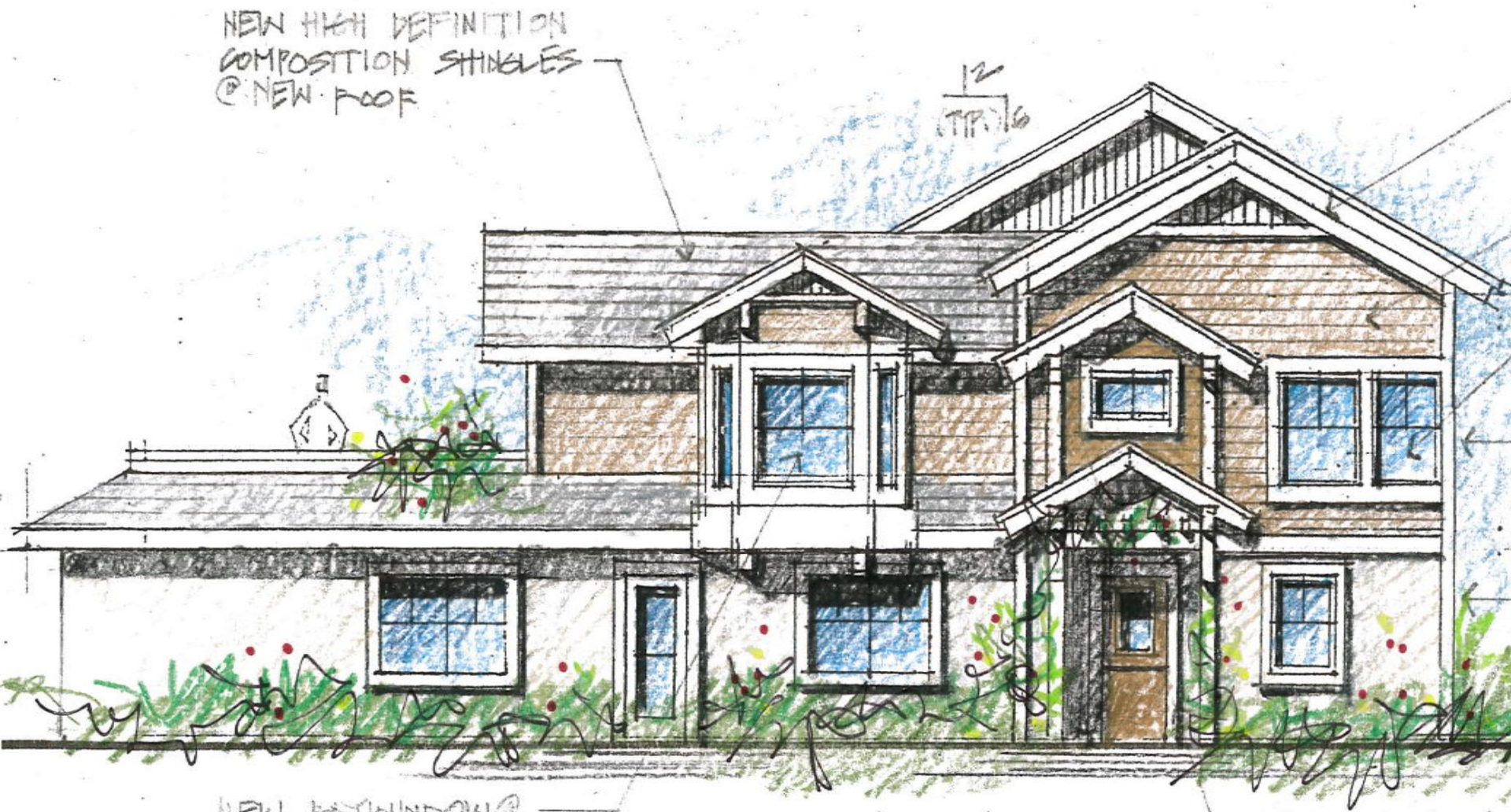
Existing



Existing



Proposed

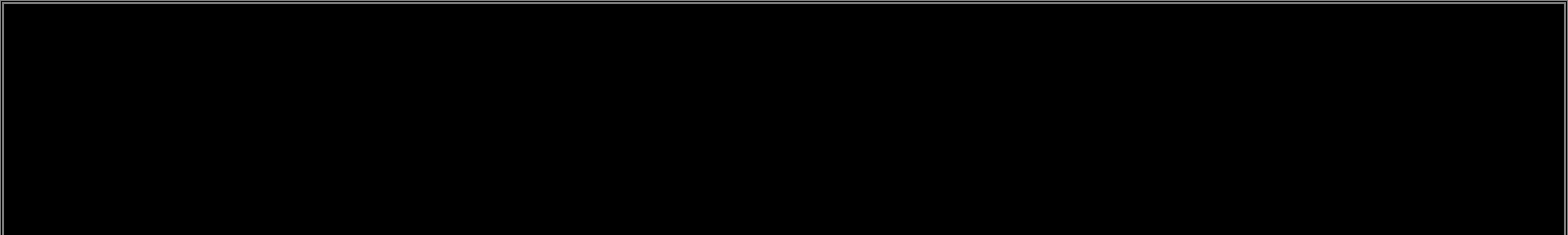




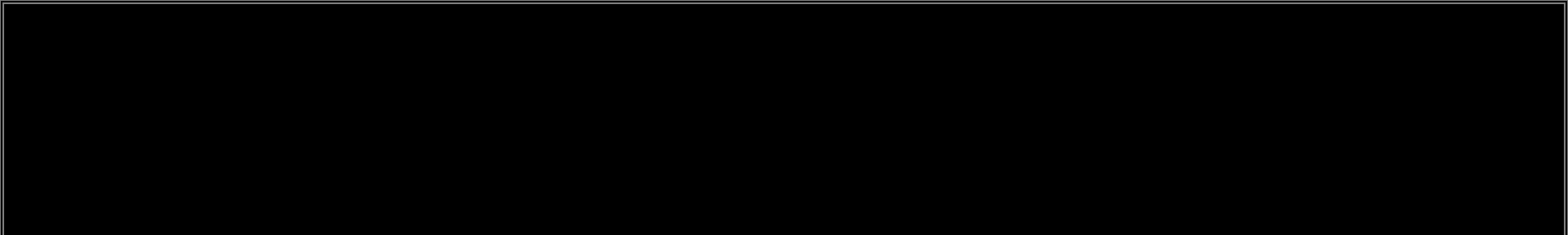
For more information contact:

Melinda Whelan
949-644-3221
mwhelan@newportbeachca.gov
www.newportbeachca.gov









**CITY OF NEWPORT BEACH
PLANNING COMMISSION STAFF REPORT**

September 19, 2013 – Study Session

Agenda Item No. 3

SUBJECT: Wireless Telecommunications Facilities Ordinance (PA2012-057)
• Code Amendment No. CA2012-004

PLANNER: James Campbell, Principal Planner
(949) 644-3210, jcampbell@newportbeachca.gov

PROJECT SUMMARY

An amendment to the Newport Beach Municipal Code (“NBMC”) to update regulations regarding wireless telecommunication facilities (“Telecom Facilities”). Regulations currently contained in Chapter 15.70 would be updated and relocated to Title 20 (Planning and Zoning) and Chapter 15.70 would be rescinded in its entirety.

RECOMMENDED ACTION

Review and comment on the proposed draft ordinance.

DISCUSSION

The Telecommunications (Telecom) Ordinance was adopted by City Council in October 2002, codifying the regulations and design standards for telecom facilities within the City. At the time the telecom ordinance was adopted, state and federal case law suggested cities were somewhat limited in how telecom facilities could be regulated. However, more recent case law favors more appropriate local control to ensure the compatibility of these facilities with surrounding uses, similar to the manner in which other land uses are reviewed. Additionally, staff identified several issues based upon its experiences implementing the current ordinance that could be addressed by the update.

The City Council initiated the amendment process in March 2012. Staff then prepared a comprehensive update of the existing Wireless Telecommunications Facilities Ordinance (“Telecom Ordinance”). In summary, the existing Telecom Ordinance (Chapter 15-70) would be updated in its entirety and relocated to the Zoning Code (Title 20). The item was introduced to the Planning Commission in July 2012, and was continued to allow for an expanded dialog with the telecommunications industry. After meeting with industry representatives in July 2012, staff returned to the Planning Commission in September 2012, where the Commission held a study session. A copy of the agenda packet and approved minutes for the September 6, 2012, study session can be found at the City’s website at the following web address:

<http://ecms.newportbeachca.gov/Web/Browse.aspx?startid=321452&cnb=PlanningCommissionMeetings&dbid=0>

The current draft ordinance (Attachment PC 1) was distributed to interested stakeholders, including several industry representatives, in June 2013. The draft ordinance remains a work in progress. Since the last draft, staff has modified the overall structure of the ordinance, making an underline/strikeout version extremely confusing to read. Additional refinements will be proposed based upon further input from the Commission, public, and City staff.

The following discussion summarizes various issues raised, direction, and in some cases additional suggested changes. Staff also received several comments letters on the draft ordinance that are attached (Attachment PC 2).

1. Discretionary Permit Process [Sections 20.49.020 and 20.49.070]

Telecom industry representatives requested an administrative process and limited use of discretionary applications. At the prior study session, the Planning Commission agreed and also suggested that when discretionary review would be required, the Zoning Administrator would be the appropriate review authority for simpler requests and that the Planning Commission would only review the most visible proposals. One purpose of the proposed ordinance is to provide a review process and public notice of proposed facilities through the existing land use entitlement process. Staff believes that the discretionary process is appropriate for visible facilities whether on public or private property or within the public right-of-way. Additionally, staff believes the discretionary process is a reasonable exercise of the City's right to control the time, place, and manner Telecom Facilities are established within the public right-of-way. To address the concern that the discretionary process is applied too broadly, staff modified the draft ordinance such that stealth/screened facilities located in allowed zones on private property and on public property be administratively approved without providing notice to the public. All other facilities would require a Minor Use Permit (MUP), Conditional Use Permit (CUP), or Limited Term Permit (LTP).

2. Legal Nonconforming Facilities [Section 20.49.020 (F)]

Industry representatives were concerned that existing facilities would be required to either be changed or phased out in the future. The draft ordinance provides for the maintenance and continuation of existing facilities that were lawfully constructed but would be considered nonconforming because they would not comply with the provisions of the proposed ordinance. These legal nonconforming facilities would not be required to be modified or amortized. Future facilities proposed or the future modification of existing facilities would be required to comply with the adopted Telecom Ordinance.

3. Definitions [Section 20.49.030]

There were comments regarding the need to improve the clarity of definitions. The establishment of appropriate antenna classifications was one area in need of clarification. The prior draft had descriptions of Antenna Classes in a subsection that established priority

locations. Staff has relocated the descriptions of the proposed Antenna Classes to the subsection providing definitions. Please also note that the antenna classifications have changed from the prior draft, which is discussed below.

4. Technology Requirements [Formerly Section 20.49.040]

Comments were received indicating that the use of, "...the most efficient, diminutive and least obtrusive technology..." is inappropriate and could theoretically be used to discriminate among carriers based upon their technology. The current ordinance in effect provides this policy language; however, the key factor is that a new facility be unobtrusive. Staff has modified the draft to stress that new facilities be designed to be as unobtrusive as possible. The modified section is now located in section 20.49.010, subsection C. The draft ordinance also includes language in indicating that the Telecom Ordinance cannot be applied in a manner that as to unreasonably discriminate among providers of functionally equivalent services.

5. Location Preferences/Antenna Classifications [Section 20.49.050]

The proposed classification system with the prior draft ordinance was confusing and the revised draft ordinance would establish five telecom facility classifications:

1. Class 1 (Stealth/Screened)
2. Class 2 (Visible)
3. Class 3 (Public Right-of-Way Installations)
4. Class 4 (Freestanding Structure)
5. Class 5 (Temporary)

The revised draft ordinance indicates a hierarchy that was originally based upon the current ordinance and previous draft. With the revised classification system above, staff believes the hierarchy should be modified as Class 3 and Class 5 do not seem to be more desirable than any other installation when all facilities must be designed or located to be the least visually unobtrusive. Additionally, there may be a circumstance where a Class 3 facility may be a better option than a Class 2. If a hierarchy is retained, it recommends that it be Class 1, Class 2, and then Class 4.

6. Location Preferences, Prohibited Locations [Section 20.49.050 (B)]

Industry representatives have indicated a need to access all zones including all residential areas. The current ordinance does not allow Telecom Facilities to be installed on residential lots (including residential portions of Planned Communities or Specific Plans) or in passive open space zones except under very limited circumstances. Common area or non-residential lots within residential zones, multi-family buildings, and collocated installations on existing utility towers in utility easements within passive open space zones are the only exceptions and they currently require City Council approval. The proposed ordinance: 1) maintains the same prohibited locations; 2) it provides for Planning Commission review at

public hearings for exceptions to height standards; and 3) it provides access to low-density residential areas within the public right-of-way provided they meet applicable design standards. The revised draft does contain a typographical error in that it lists streetlights as prohibited locations. Staff intended to prohibit telecom facilities on traffic control standards not streetlights. This error will necessitate other changes for internal consistency.

7. Location Preferences, Installations in the Public Right-of-Way [Section 20.49.050 (C)]

Industry representatives contend that this section includes unreasonable limitations on their use of the public right-of-way. The draft ordinance requires compliance with Title 13 (Streets and Highways) and proposed facilities must also comply with Chapter 15.32 (Undergrounding Utilities) of the Municipal Code. The City controls the time, place, and manner in which the public right-of-way is accessed. Antennas can be installed on existing vertical poles; however, new poles within underground districts may not be permissible pursuant to provisions of Title 13 and Chapter 15.32 of the Municipal Code. Support equipment, with the exception of pedestal meters, may be required to be located underground in areas where existing utilities are underground and Title 13 also requires new support equipment to be placed in underground vaults. Staff believes that the existing provisions of Title 13 and Chapter 15.32 are consistent with State law.

8. General Development and Design Standards [Section 20.49.060]

The emphasis on making Telecom Facilities as inconspicuous as possible has been the basic goal of the Telecom Ordinance currently in effect. This section provides screening methods for each Antenna Class and it addresses public view protection, support equipment, and maintenance among other issues. Staff believes the standards are appropriate; however, staff does recommend the removal of the term, “To the greatest extent feasible” from the general criteria provisions as it would weaken the requirement to design Telecom Facilities to minimize visual impacts.

9. Height [Section 20.49.060 (C)]

The telecom industry almost universally wants taller facilities to provide better coverage. Additionally, the industry does not want to be subject to a Variance process if there is a need for a facility taller than allowed. The ordinance currently in effect allows Telecom Facilities on private property to be no taller than the upper height limit (e.g., 35 feet in the 26/35-foot height limitation zone). Telecom Facilities proposed within the public right-of-way on streetlights or other structures are limited to 35 feet and antennas proposed on existing power transmission lines that are taller than 35 feet cannot be taller than the existing pole. The City Council can authorize an additional 15 feet without a public hearing and if there is a need for a facility taller, the current code does not provide a process for deviation.

The proposed draft ordinance would change the height requirements stated above by allowing Telecom Facilities to be 5 feet above the base height limit (e.g., 26 feet in the 26/35

foot height limitation zone + 5 feet = 31 feet). This standard treats Telecom Facilities similar to how sloped roofs, elevator shafts, and screened rooftop mechanical equipment are allowed to exceed the based height limit. Discretionary review would be required for a proposal above this standard up to the upper height limit (e.g., 35 feet in the 26/35 foot height limitation zone). A Variance would be required for facilities proposed to exceed the upper height limit.

10. Setback Standards [Section 20.49.060 (D)]

The prior draft included an additional setback distance of 110 percent of the facility's height as a "fall zone" setback. Staff recommended its elimination at the prior study session and with the Planning Commission's concurrence, it was removed from the current draft.

11. Screening Standards [Section 20.49.060 (F)]

This subsection provides standards for screening antennas and support equipment for the five proposed antenna classes. This section was modified from the prior draft ordinance to reflect the changes in proposed antenna classifications.

12. Permit Review Procedures [Section 20.49.070]

Past comments suggested that the review process was burdensome and the Commission suggested that the process expand the use of administrative approvals and make many Telecom applications subject to review by the Zoning Administrator rather than the Planning Commission. The current draft ordinance contains Table 4-1 that identifies which approval or permit application is required for each Antenna Class while introducing a 150 foot proximity standard. The entries for Class 2 and Class 4 facilities are complicated given an attempt to reflect currently prohibited zones.

1. **Class 1** facilities would be allowed administratively provided the facilities meet applicable location and design standards.
2. **Class 2** facilities should have a more simplified approach where a CUP would only be required when a facility is proposed within a specified distance of residential uses or all Class 2 facilities might only require a MUP.
3. **Class 3** facilities would require a MUP and fall under the jurisdiction of the Zoning Administrator. Additionally, since Class 3 facilities are in the public right-of-way, the Public Works Department would review the proposals for consistency with Title 13 and to ensure appropriate control of the time, place, and manner of use of the right-of-way. Staff would process required license agreements and encroachment permits or encroachment agreements for approved facilities.
4. **Class 4** facilities would require a CUP to be reviewed by the Planning Commission unless it was proposed within 150 feet of a residential district where a MUP would be required, which would be reviewed by the Zoning Administrator. Staff recommends this provision be reversed or that all new freestanding structures require CUPs.

5. **Class 5** facilities are temporary and would require an LTP and also fall under the jurisdiction of the Zoning Administrator. Lastly, the revised draft ordinance has been updated to remove several internal inconsistencies.

13. License Agreements for City-Owned Property [Section 20.49.090]

A license agreement for the use of City owned structures or property is required by the current Telecom Ordinance. The requirement would remain with the proposed update and the license agreement could be reviewed concurrently with the review of the Telecom Facility.

14. Modification of existing facilities [Section 20.49.100]

This section is entirely new and it was drafted in response to 2012 federal regulations. Federal law prohibits a state or local government from denying a request to modify an existing facility under particular conditions when the modification does not “substantially change the physical dimensions of a tower or base station.” Federal law does not define what is considered a “substantial” change and staff recommends a five percent standard to ensure that public views are protected and visual impacts are avoided.

15. Radio Frequency (RF) Emissions Reporting [Section 20.49.110]

The current telecom ordinance required RF compliance reporting and this section is intended to continue the policy of requiring them. Staff has received comments indicating that RF emission reports are unnecessary given Federal Communications Commission (FCC) oversight. It is acknowledged that telecom facility cannot be operated with RF emissions that exceed applicable FCC standards. The compliance report is a simple means to document compliance. The telecom industry is also concerned about the use of RF emissions as a consideration in the review of applications for proposed facilities. The City acknowledges that RF emissions are under the jurisdiction of the FCC and that the consideration of RF emissions for FCC compliant facilities is precluded by federal law.

Next Steps

Based upon Commission direction and public feedback, staff will prepare a final revised draft ordinance that will be published in advance of a future public hearing to allow for review and comment.

Prepared by:

Submitted by:


James Campbell, Principal Planner


Brenda Wisneski, AICP, Deputy Director

ATTACHMENTS

PC 1 Draft Ordinance
PC 2 Comment Letters

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ATTACHMENT PC 1

Draft Ordinance

Intentionally Blank

Chapter 20.49 – Wireless Telecommunications Facilities

Sections

20.49.010 – Purpose

20.49.020 – Effect of Chapter

General Provisions

20.49.030 – Definitions

20.49.040 – Available Technology

20.49.050 – Location Preferences

20.49.060 – General Development and Design Standards

20.49.070 – Permit Review Procedures

20.49.080 – Permit Implementation, Time Limits, Duration, and Appeals

20.49.090 – Agreement for Use of City-owned or City-held Trust Property

20.49.100 – Modification of Existing Telecom Facilities

20.49.110 – Operational and Radio Frequency Compliance and Emissions Report

20.49.120 – Right to Review or Revoke Permit

20.49.130 – Removal of Telecom Facilities

20.49.010 – Purpose

- A.** The purpose of this Chapter is to provide for wireless telecommunication facilities (“Telecom Facilities”) on public and private property consistent with state and federal law while ensuring public safety, reducing the visual effects of telecom equipment on public streetscapes, protecting scenic, ocean and coastal public views, and otherwise mitigating the impacts of such facilities. More specifically, the regulations contained herein are intended to; 1) encourage the location of Antennas in non-residential areas, 2) encourage Collocation at new and existing Antenna sites, and 3) encourage Telecom Facilities to be located in areas where adverse visual impacts on the community and public views are minimized.
- B.** The provisions of this Chapter are not intended and shall not be interpreted to prohibit or to have the effect of prohibiting telecom services. This Chapter shall be applied to providers, operators, and maintainers of wireless services regardless of whether authorized by state or federal regulations. This Chapter shall not be applied in such a manner as to unreasonably discriminate among providers of functionally equivalent telecom services.
- C.** All Telecom Facilities approved under this Chapter shall utilize the most efficient and least obtrusive available technology in order to minimize the number of Telecom Facilities in the City and reduce their visual impact on the community and public views.

20.49.020 – Effect of Chapter

- A. Regulatory Scope.** These regulations are applicable to all Telecom Facilities providing voice and/or data transmission such as, but not limited to, cell phone, internet and radio relay stations.
- B. Permit and/or Agreement Required.** Prior to construction of any Telecom Facility in the City, the applicant shall obtain a Minor Use Permit (MUP), Conditional Use Permit (CUP), Limited Term Permit (LTP), or Zoning Clearance (ZC), depending on the proposed location, Antenna Class, and method of installation, in accordance with Section 20.49.070 (Permit Review Procedures). Applicants who obtain a MUP, CUP, LTP, or ZC (and an encroachment permit, if required) for any Telecom Facility approved to be located on any City-owned property or City-held Trust property, shall enter into an agreement prepared and executed by the City Manager or its designee prior to construction of the Facility, consistent with Section 20.49.090 (Agreement for Use of City-owned or City-held Trust Property).
- C. Exempt Facilities.** The following types of facilities are exempt from the provisions of this Chapter:
1. Amateur radio antennas and receiving satellite dish antennas, and citizen band radio antennas regulated by Section 20.48.190 (Satellite Antennas and Amateur Radio Facilities).
 2. Dish and other antennas subject to the FCC Over-the-Air Reception Devices (“OTARD”) rule, 47 C.F.R. § 1.4000 that are designed and used to receive video programming signals from (a) direct broadcast satellite services, or (b) television broadcast stations, or (c) for wireless cable service.
 3. During an emergency, as defined by Title 2 of the NBMC, the City Manager, Director of Emergency Services or Assistant Director of Emergency Services shall have the authority to approve the placement of a Telecom Facility in any district on a temporary basis not exceeding ninety (90) calendar days from the date of authorization. Such authorization may be extended by the City on a showing of good cause.
 4. Facilities exempt from some or all of the provisions of this Chapter by operation of state or federal law to the extent so determined by the City.
 5. Systems installed or operated at the direction of the City or its contractor.
 6. Systems installed entirely within buildings for the sole purpose of providing wireless telecommunications services or data transmission services to building occupants.
- D. Other Regulations.** Notwithstanding the provisions of this Chapter, all Telecom Facilities within the City shall comply with the following requirements:

1. Rules, regulations, policies, or conditions in any permit, license, or agreement issued by a local, state or federal agency which has jurisdiction over the Telecom Facility.
 2. Rules, regulations and standards of the Federal Communications Commission (FCC) and the California Public Utilities Commission (CPUC).
- E. Regulations not in Conflict or Preempted.** All Telecom Facilities within the City shall comply with the following requirements unless in conflict with or preempted by the provisions of this Chapter:
1. All applicable City design guidelines and standards.
 2. Requirements established by any other provision of the Municipal Code and by any other ordinance and regulation of the City.
- F. Legal Nonconforming Facility.** Any Telecom Facility that is lawfully constructed, erected, or approved prior to the effective date of this Chapter that is operating in compliance with all applicable laws, and which Facility does not conform to the requirements of this Chapter shall be accepted and allowed as a legal nonconforming Facility if otherwise approved and constructed. Legal nonconforming Telecom Facilities shall comply at all times with the laws, ordinances, and regulations in effect at the time the application was deemed complete, and any applicable federal and state laws as they may be amended or enacted, and shall at all times comply with any conditions of approval.

20.49.030 – Definitions.

For the purposes of this Chapter, the following definitions shall apply:

- A. Antenna.** Antenna means a device used to transmit and/or receive radio or electromagnetic waves between earth and/or satellite-based systems, such as reflecting discs, panels, microwave dishes, whip antennas, Antennas, arrays, or other similar devices.
- B. Antenna Array.** Antenna Array means Antennas having transmission and/or reception elements extending in more than one direction, and directional Antennas mounted upon and rotated through a vertical mast or tower interconnecting the beam and Antenna support, all of which elements are deemed to be part of the Antenna.
- C. Antenna Classes.** Antenna Classes are Telecom Facilities and the attendant Support Equipment separated into the following distinct classes:
1. Class 1 (Stealth/Screened): a Facility with Antennas mounted on an existing or proposed non-residential building or other structure not primarily intended to be an antenna support structure where Antennas and Support Equipment, including the base station, are fully screened so that they are not visible to the general public.

2. **Class 2 (Visible):** a Facility with Antennas mounted on an existing non-residential building, structure, pole, light standard, Utility Tower, Wireless Tower and/or Lattice Tower.
 3. **Class 3 (Public Right-of-Way Installations):** a Facility with Antennas installed on a structure located in the public right-of-way.
 4. **Class 4 (Freestanding Structure):** a Facility with Antennas mounted on a new freestanding structure constructed for the sole or primary purpose of supporting the Telecom Facility.
 5. **Class 5 (Temporary):** a Facility including associated Support Equipment that is installed at a site on a temporary basis pursuant to a Limited Term Permit. A Class 5 installation may also be installed in connection with a special event upon the approval of a Special Events Permit pursuant to Chapter 11.03 without a Limited Term Permit.
- D. Base Station.** Base Station means the electronic equipment at a Telecom Facility installed and operated by the Telecom Operator that together perform the initial signal transmission and signal control functions. Base Station does not include the Antennas and Antenna support structure, or the Support Equipment, nor does it include any portion of DAS.
- E. City-owned or City-held Trust Property.** City-owned or City-held Trust Property means all real property and improvements owned, operated or controlled by the City, other than the public right-of-way, within the City's jurisdiction, including but is not limited to City Hall, Police and Fire facilities, recreational facilities, parks, libraries, monuments, signs, streetlights and traffic control standards.
- F. Collocation.** Collocation means an arrangement whereby multiple Telecom Facilities are installed on the same building or structure.
- G. Distributed Antenna System, DAS.** Distributed Antenna System (DAS) means a network of one or more Antennas and fiber optic nodes typically mounted to streetlight poles, or utility structures, which provide access and signal transfer services to one or more third-party wireless service providers. DAS also includes the equipment location, sometimes called a "hub" or "hotel" where the DAS network is interconnected with third-party wireless service providers to provide the signal transfer services.
- H. FCC.** FCC means the Federal Communications Commission, the federal regulatory agency charged with regulating interstate and international communications by radio, television, wire, satellite, and cable.
- I. Feasible.** Feasible means capable of being accomplished in a successful manner within a reasonable period of time, taking into account environmental, physical, legal and technological factors.

- J. Lattice Tower.** Lattice Tower means a freestanding open framework structure used to support Antennas, typically with three or four support legs of open metal crossbeams or crossbars.
- K. Monopole.** Monopole means a single free-standing pole or pole-based structure solely used to act as or support a Telecom Antenna or Antenna Arrays.
- L. Operator or Telecom Operator.** Operator or Telecom Operator means any person, firm, corporation, company, or other entity that directly or indirectly owns, leases, runs, manages, or otherwise controls a Telecom Facility or facilities within the City.
- M. Public Right-of-Way.** Public Right-of-Way or (“PROW”) means the improved or unimproved surface of any street, or similar public way of any nature, dedicated or improved for vehicular, bicycle, and/or pedestrian related use. PROW includes public streets, roads, lanes, alleys, sidewalks, medians, parkways and landscaped lots.
- N. Stealth or Stealth Facility.** Stealth or Stealth Facility means a Telecom Facility in which the Antenna, and the Support Equipment, are completely hidden from view in a monument, cupola, pole-based structure, or other concealing structure which either mimics, or which also serves as, a natural or architectural feature. Concealing structures which are obviously not such a natural or architectural feature to the average observer do not qualify within this definition. A false tree is not a Stealth Facility.
- O. Support Equipment.** Support Equipment means the physical, electrical and/or electronic equipment included within a Telecom Facility used to house, power, and/or contribute to the processing of signals from or to the Facility’s Antenna or Antennas, including but not limited to a base station, cabling, air conditioning units, equipment cabinets, pedestals, and electric service meters. Support Equipment does not include DAS, Antennas or the building or structure to which the Antennas or other equipment are attached.
- P. Telecommunication(s) Facility, Telecom Facility, Telecom Facilities, Wireless Telecommunications Facility, or Facility.** Telecommunication(s) Facility, Telecom Facility, Telecom Facilities, Wireless Telecommunications Facility, or simply Facility or Facilities means an installation that sends and/or receives wireless radio frequency signals or electromagnetic waves, including but not limited to directional, omni-directional and parabolic antennas, structures or towers to support receiving and/or transmitting devices, supporting equipment and structures, and the land or structure on which they are all situated. The term does not include mobile transmitting devices, such as vehicle or hand held radios/telephones and their associated transmitting antennas.
- Q. Utility Pole.** Utility Pole means a single freestanding pole used to support services provided by a public or private utility provider.
- R. Utility Tower.** Utility Tower shall mean an open framework structure (see lattice tower) or steel pole used to support electric transmission facilities.

- S. Wireless Tower.** Wireless Tower means any structure built for the sole or primary purpose of supporting Antennas used to provide wireless services authorized by the FCC. A Distributed Antenna System (DAS) installed pursuant to a Certificate of Public Convenience and Necessity (CPCN) issued by the California Public Utilities Commission on a water tower, utility tower, street light, or other structures built or rebuilt or replaced primarily for a purpose other than supporting wireless services authorized by the FCC, including any structure installed pursuant to California Public Utility Code Section 7901, is not a Wireless Tower for purposes of this definition. For an example only, a prior-existing light standard which is replaced with a new light standard to permit the addition of Antennas shall not be considered a Wireless Tower, but rather a replacement light standard.

20.49.050 – Location Preferences.

- A. Preferred Locations.** To limit the adverse visual effects of and proliferation of new or individual Telecom Facilities in the City, the following list establishes the order of preference for the location and installation of Telecom Facilities, from highest priority location and technique to lowest.

1. Collocation of a new facility at an existing facility.
2. Class 1.
3. Class 2.
4. Class 3.
5. Class 4.
6. Class 5.

- B. Prohibited Locations.** Telecom Facilities are prohibited in the following locations:

1. On properties zoned for single-unit or two-unit residential development, including equivalent PC District designation.
2. On properties zoned for multi-unit residential development and mixed-use development where the maximum allowable number of dwelling units is four (4) units.
3. In the Open Space (OS) zoning district, unless Telecom Facilities are collocated on an existing Utility Tower within a utility easement area, or collocated on an existing Telecom Facility.
4. On streetlights.

- C. Installations in the Public Right-of-Way.** All Telecom Facilities proposed to be located in the public right-of way shall comply with the provisions of Title 13. Antenna installations on

an existing or replacement streetlight pole shall be compatible in design, scale, and proportion to streetlights and the pole on which they are mounted.

D. Collocation Installations. A new Telecom Facility proposed within one thousand (1,000) feet of an existing Telecom Facility shall be required to collocate on the same building or structure as the existing Telecom Facility.

1. Exception: If the reviewing authority determines, based on compelling evidence submitted by the applicant, that Collocation of one or more new Telecom Facilities within one thousand (1,000) feet of an existing Telecom Facility is not Feasible, then such Collocation shall not be required.
2. Condition Requiring Future Collocation. In approving a Telecom Facility, the review authority may impose a condition of approval providing for future Collocation of Telecom Facilities by other carriers at the same site.

20.49.060 – General Development and Design Standards.

A. General Criteria. All Telecom Facilities shall employ design techniques to minimize visual impacts and provide appropriate screening to result in the least intrusive means of providing the service. Such techniques shall be employed to make the installation, appearance and operations of the Telecom Facility as visually inconspicuous as possible. To the greatest extent Feasible, Telecom Facilities shall be designed to minimize the visual impact of the Telecom Facility by means of location, placement, height, screening, landscaping, and shall be compatible with existing architectural elements, building materials, other building characteristics, and the surrounding area.

In addition to the other design standards of this Section, the following criteria shall be considered by the review authority in connection with its processing of any MUP, CUP, LTP, or ZC for a Telecom Facility:

1. Blending. The extent to which the proposed Telecom Facility blends into the surrounding environment or is architecturally compatible and integrated into the structure.
2. Screening. The extent to which the proposed Telecom Facility is concealed or screened by existing or proposed new topography, vegetation, buildings or other structures.
3. Size. The total size of the proposed Telecom Facility, particularly in relation to surrounding and supporting structures.
4. Location. Proposed Telecom Facilities shall be located so as to utilize existing natural or man-made features in the vicinity of the Telecom Facility, including topography, vegetation, buildings, or other structures to provide the greatest amount of visual screening and blending with the predominant visual backdrop.

B. Public View Protection. Telecom Facilities involving a site adjacent to an identified public view point or corridor, as identified in General Plan Policy NR 20.3 (Public Views), shall be reviewed to evaluate the potential impact to public views consistent with Section 20.30.100 (Public View Protection).

C. Height.

1. Telecom Facilities installed on buildings or other structures shall comply with the base height limit established in Part 2 (Zoning Districts, Allowable Uses, and Zoning District Standards) for the zoning district in which the Telecom Facility is located.
2. Applications for the installation of Telecom Facilities proposed to be greater than the base height limit for the zoning district in which the Telecom Facility is located shall be subject to review and action by the Planning Commission. The Planning Commission may approve or conditionally approve a CUP for a Telecom Facility to exceed the base height limit after making all of the required findings in Section 20.49.070.H (Permit Review Procedures).
3. All Telecom Facilities shall comply with Antenna height restrictions, if any, required by the Federal Aviation Administration, and shall comply with Section 20.30.060.E. (Airport Environs Land Use Plan (AELUP) for John Wayne Airport and Airport Land Use Commission (ALUC) Review Requirements) as may be in force at the time the Telecom Facility is permitted or modified.
4. Antennas shall be installed at the minimum height possible to provide average service to the Telecom Operator's proposed service area. In any case, no Antenna or other telecom equipment or screening structure shall extend higher than the following maximum height limits:
 - a. Telecom Facilities installed on streetlight standards, Utility Poles, Utility Towers or other similar structures within the public right-of-way shall not exceed 35 feet in height above the finished grade.
 - b. Telecom Facilities may be installed on existing Utility Poles or Utility Towers that exceed 35 feet above the finished grade where the purposes of the existing Utility Pole or Utility Tower is to carry electricity or provide other wireless data transmission provided that the top of the Antenna does not extend above the top of the Utility Pole or Utility Tower.
 - c. Telecom Facilities installed in ground-mounted flagpoles may be installed at a maximum height of 35 feet.

D. Setbacks. Proposed Telecom Facilities shall comply with the required setback established by the development standards for the zoning district in which the Telecom Facility is

proposed to be located. Setbacks shall be measured from the part of the Telecom Facility closest to the applicable lot line or structure.

E. Design Techniques. Design techniques shall result in the installation of a Telecom Facility that is in scale with the surrounding area, hides the installation from predominant views from surrounding properties, and prevents the Telecom Facility from visually dominating the surrounding area. Design techniques may include the following:

1. Screening elements to disguise, or otherwise hide the Telecom Facility from view from surrounding uses.
2. Painting and/or coloring the Telecom Facility to blend into the predominant visual backdrop.
3. Siting the Telecom Facility to utilize existing features (buildings, topography, vegetation, etc.) to screen or hide the Telecom Facility.
4. Utilizing simulated natural features (trees, rocks, etc.) to screen or hide the Telecom Facility.
5. Providing Telecom Facilities of a size that, as determined by the City, is not visually obtrusive such that any effort to screen the Telecom Facility would create greater visual impacts than the Telecom Facility itself.

F. Screening Standards. For Collocation installations, the screening method shall be materially similar to those used on the existing Telecom Facility, and shall not diminish the screening of the Telecom Facility. If determined necessary by the review authority, use of other improved and appropriate screening methods may be required to screen the Antennas and Support Equipment from public view. The Following is a non-exclusive list of potential design and screening techniques that should be considered:

1. For Class 1 (Stealth/Screened) Antenna Installations:
 - a. All Telecom Facility components, including all Antenna panels and Support Equipment, shall be fully screened, and mounted either inside the building or structure, or behind the proposed screening elements and not on the exterior face of the building or structure.
 - b. Screening materials shall match in color, size, proportion, style, and quality with the exterior design and architectural character of the structure and the surrounding visual environment. If determined necessary by the reviewing authority, screening to avoid adverse impacts to views from land or buildings at higher elevations shall be required.
 - c. In conditions where the Antennas and Support Equipment are installed within a new freestanding structure, (an architectural feature such as a steeple, religious symbol

or tower, cupola, clock tower, sign, etc.), the installation shall blend in the predominant visual backdrop so it appears to be a decorative and attractive architectural feature.

2. For Class 2 (Visible) Antenna Installations:

- a. Building or structure mounted Antennas shall be painted or otherwise coated to match or complement the predominant color of the structure on which they are mounted and shall be compatible with the architectural texture and materials of the building to which the Antennas are mounted. No cables and mounting brackets or any other associated equipment or wires shall be visible from above, below or the side of the Antennas.
- b. All Antenna components and Support Equipment shall be treated with exterior coatings of a color and texture to match the predominant visual background and/or adjacent architecture so as to visually blend in with the surrounding development. Subdued colors and non-reflective materials that blend with surrounding materials and colors shall be used.

3. For Class 3 (Public Right-of-Way) Antenna Installations:

- a. Whenever Feasible, new Antennas proposed to be installed in the public right-of-way shall be placed on existing or replacement utility structures, light standards, or other existing vertical structures. Antenna installations on existing or replacement streetlight poles, traffic control standards, or Utility Poles shall be screened by means of canisters, radomes, shrouds other screening measures whenever Feasible, and treated with exterior coatings of a color and texture to match the existing pole.
- b. If Antennas are proposed to be installed without screening, they shall be flush-mounted to the pole and shall be treated with exterior coatings of a color and texture to match the existing pole.
- c. If a new pole is proposed to replace an existing pole, the replacement pole shall be consistent with the size, shape, style and design of the existing pole, including any attached light arms.

4. For Class 4 (Freestanding Structure) Antenna Installations:

- a. For a false rock, the proposed screen structure shall match in scale and color other rock outcroppings in the general vicinity of the proposed site. A false rock screen may not be considered appropriate in areas that do not have natural rock outcroppings.
- b. The installation of a false tree (such as but without limitation a monopine or monopalme, or false shrubbery) shall be designed for and located in a setting that is compatible with the proposed screening method. Such installations shall be situated

so as to utilize existing natural or manmade features including topography, vegetation, buildings, or other structures to provide the greatest amount of visual screening. For false trees or shrubbery installations, all Antennas and Antenna supports shall be contained within the canopy of the tree design, and other vegetation comparable to that replicated in the proposed screen structure shall be prevalent in the immediate vicinity of the antenna site, and the addition of new comparable living vegetation may be necessary to enhance the false tree or shrubbery screen structure.

- c. For installations of a flagpole, the pole shall not exceed 24 inches in width at the base of the flagpole and also shall not exceed 20 inches in width at the top of the flagpole.

5. For Class 5 (Temporary) Antenna Installations:

- a. A temporary Telecom Facility installation may require screening to reduce visual impacts depending on the duration of the permit and the setting of the proposed site. If screening methods are determined to be necessary by the review authority, the appropriate screening methods will be determined through the permitting process reflecting the temporary nature of the Telecom Facility.

6. Support Equipment. All Support Equipment associated with the operation of any Telecom Facility shall be placed or mounted in the least visually obtrusive location possible, and shall be screened from view.

- a. Installations on Private Property. The following is a non-exclusive list of potential screening techniques for Telecom Facilities located on private property:

- (1) Building-Mounted Facilities. For building or structure-mounted Antenna installations, Support Equipment for the Telecom Facility may be located inside the building, in an underground vault, or on the roof of the building that the Telecom Facility is located on, provided that both the equipment and any screening materials are architecturally compatible and/or painted the color of the building, roof, and/or surroundings thereby providing screening. If placed in an underground vault, flush-to-grade vents, or vents that extend no more than 24 inches above the finished grade and are screened from public view may be incorporated.

- (2) Roof-Mounted Facilities. All screening materials for roof-mounted Telecom Facilities shall be of a quality and design compatible with the architecture, color, texture and materials of the building to which it is mounted. If determined necessary by the review authority, screening to avoid adverse impacts to views from land or buildings at higher elevations shall be required.

- (3) Freestanding Facilities. For freestanding Telecom Facilities installations, not mounted on a building or structure, Support Equipment for the Telecom Facility may be visually screened by locating the Support Equipment in a fully enclosed building, in an underground vault, or in a security enclosure consisting of walls and/or landscaping to effectively screen the Support Equipment at the time of installation.
 - (4) All wall and landscaping materials shall be selected so that the resulting screening will be visually integrated with the architecture and landscape architecture of the surroundings.
 - (5) Screening enclosures may utilize graffiti-resistant and climb-resistant vinyl-clad chain link with a “closed-mesh” design (i.e. one-inch gaps) or may consist of an alternate enclosure design approved by the review authority. In general, the screening enclosure shall be made of non-reflective material and painted to blend with surrounding materials and colors.
 - (6) If placed in an underground vault, flush-to-grade vents, or alternatively, vents that extend no more than 24 inches above the finished grade and are screened from public view may be utilized.
- b. Installations in a Public Right-of-Way. The following is a non-exclusive list of potential screening techniques for Telecom Facilities located in a public right-of-way:
- (1) Where the existing utilities services (e.g., telephone, power, cable TV) are located underground, the Support Equipment shall be placed underground, consistent with Chapter 13.20. Flush-to-grade underground vault enclosures, including flush-to-grade vents, or vents that extend no more than 24 inches above the finished grade and are screened from public view may be incorporated. Electrical meters required for the purpose of providing power for the proposed Telecom Facility may be installed above ground on a pedestal in a public right-of-way.
 - (2) Support equipment approved to be located above ground in a public right-of-way shall be painted or otherwise coated to be visually compatible with the existing or replacement pole, lighting and/or traffic signal equipment without substantially increasing the width of the structure.
 - (3) All transmission or amplification equipment such as remote radio units, tower mounted amplifiers and surge suppressors shall be mounted inside the streetlight pole or traffic control standard without increasing the pole diameter or shall be installed in a flush-to-grade vault enclosure adjacent to the base of the pole.

- G. Night Lighting.** Telecom Facilities shall not be lighted except for security lighting at the lowest intensity necessary for that purpose or as may be recommended by the U.S. Flag Code. Such lighting shall be shielded so that direct illumination does not directly shine on nearby properties. The review authority shall consult with the Police Department regarding proposed security lighting for Telecom Facilities on a case-by-case basis.
- H. Signs and Advertising.** No advertising signage or identifying logos shall be displayed on any Telecom Facility except for small identification, address, warning, and similar information plates. Such information plates shall be identified in the telecom application and shall be subject to approval by the review authority. Signage required by state or federal regulations shall be allowed in its smallest permissible size.
- I. Nonconformities.** A proposed Telecom Facility shall not create any new or increased nonconformity as defined in the Zoning Code, such as, but not limited to, a reduction in and/or elimination of, required parking, landscaping, or loading zones unless relief is sought pursuant to applicable Zoning Code procedures.
- J. Maintenance.** The Telecom Operator shall be responsible for maintenance of the Telecom Facility in a manner consistent with the original approval of the Telecom Facility, including but not limited to the following:
1. Any missing, discolored, or damaged screening shall be restored to its original permitted condition.
 2. All graffiti on any components of the Telecom Facility shall be removed promptly in accordance the Newport Beach Municipal Code.
 3. All landscaping required for the Telecom Facility shall be maintained in a healthy condition at all times, and shall be promptly replaced if dead or dying.
 4. All Telecom Facilities shall be kept clean and free of litter.
 5. All equipment cabinets shall display a legible contact number for reporting maintenance problems to the Facility Operator.
 6. If a flagpole is used for a Telecom Facility, flags shall be flown and shall be properly maintained at all times. The use of the United States flag shall comply with the provisions of the U.S. Flag Code (4 U.S.C. § 1 *et seq.*).

20.49.070 – Permit Review Procedures.

- A. Application Procedures.** Applications for Telecom Facilities shall be subject to Chapters 20.50, 20.52, and 20.54 unless otherwise modified by this Section.

- B. Permit Required.** All Telecom Facilities shall obtain a MUP, CUP, LTP, or ZC if not prohibited by subsection 20.49.050.B, depending on the Antenna Class and location, as specified in the Table 4-1:

Table 4-1

Permit Requirements for Telecom Facilities

Location of Proposed Telecom Facility	Antenna Class and Permit Requirement				
	Class 1 (a)	Class 2 (a) (b)	Class 3 (a) (b)	Class 4 (a) (b)	Class 5 (a)
Facility located in any Zoning District, Planned Community, or Specific Plan within 150 feet of any Residential District or their equivalent residential land use designation within a Planned Community District or Specific Plan.	ZC	MUP	MUP	MUP	LTP
Facility not located in the area identified in Subsection 1 but located in or within 150 feet of Open Space Districts (OS), Public Facilities Districts (PF), Parks and Recreation Districts (PR), or their equivalent land use designations within a Planned Community District or Specific Plan.	ZC	MUP	MUP	CUP	LTP
Facility not located in the other areas identified	ZC	CUP	MUP	CUP	LTP

(a) Any application for a Telecom Facility that proposes to exceed the base height limit of the applicable zoning district in which the Telecom Facility is located shall require review and action of a CUP by the Planning Commission.

(b) DAS installed on an existing streetlight pole, existing utility pole or other existing structure may be allowed subject to issuance of a Zoning Clearance (ZC) when the Director determines the Facility complies with the screening requirements.

- C. Application Submission Requirements for Telecom Facilities on City-owned or City-held Trust Properties.** Prior to the submittal for any application for any Telecom Facility located on any City-owned property or City-held trust property, the applicant shall first obtain written authorization from the City Manager or its designee to submit an application.
- D. Fee.** All costs associated with the permit application review shall be the responsibility of the applicant, including any expense incurred for any outside technical or legal services in connection with the application.

- E. Review Process.** Review of applications for all Telecom Facilities in City shall be consistent with Chapter 20.50 (Permit Application Filing and Processing), and the FCC Declaratory Ruling FCC 09-99 (“Shot Clock”) deadlines.
- F. Review of Collocated Facilities.** Notwithstanding any provision of this Chapter to the contrary, pursuant to California Government Code section 65850.6 (as amended or superseded), the addition of a new Telecom Facility to an existing Telecom Facility resulting in the establishment of a Collocated Telecom Facility shall be allowed without a discretionary review provided it meets section 20.49.100. If such a Collocated Telecom Facility does not satisfy all of the requirements of Government Code section 65850.6 and Section 20.49.100, the facility shall be reviewed pursuant the review procedures provided in Table 4-1.
- G. Emergency Communications Review.** At the time an application is submitted to the Community Development Department, a copy of the Plans, Map, and Emission Standards shall be sent to the Chief of the Newport Beach Police Department. The Police Department or its designee shall review the plan’s potential conflict with emergency communications. The review may include a pre-installation test of the Telecom Facility to determine if any interference exists. If the Police Department determines that the proposal has a high probability that the Telecom Facility will interfere with emergency communications devices, the applicant shall work with the Police Department to avoid interference.
- H. Public Notice and Public Hearing Requirements.** An application for a MUP, CUP or LTP shall require a public notice, and a public hearing shall be conducted, in compliance with Chapter 20.62 (Public Hearings).
- I. Required Findings for Telecom Facilities.** The following findings shall apply to all Telecom Facilities requiring discretionary review:
1. General. The review authority may approve or conditionally approve an application for a Telecom Facility only after first finding each of the required findings for a MUP or CUP pursuant to Section 20.52.020 (Conditional Use Permits and Minor Use Permits), or an LTP pursuant to Section 20.52.040 (Limited Term Permits), and each of the following:
 - a. The proposed Telecom Facility is visually compatible with the surrounding neighborhood.
 - b. The proposed Telecom Facility complies with the technology, height, location and design standards, as provided for in this Chapter.
 - c. An alternative site(s) located further from a Residential District, Public Park or Public Facility cannot feasibly fulfill the coverage needs fulfilled by the installation at the proposed site.

- d. An alternative Antenna construction plan that would result in a higher priority Antenna Class category for the proposed Telecom Facility is not available or reasonably Feasible and desirable under the circumstances.
2. Findings to Increase Height. The review authority may approve, or conditionally approve an application for a Telecom Facility which includes a request to exceed the base height limit for the zoning district in which the Telecom Facility is located only after making each of the following findings in addition to the required findings above, as well the required findings for a MUP or CUP pursuant to Section 20.52.020 (Conditional Use Permits and Minor Use Permits), or an LTP pursuant to Section 20.52.040 (Limited Term Permits):
- a. The increased height will not result in undesirable or abrupt scale changes or relationships being created between the proposed Telecom Facility and existing adjacent developments or public spaces.
 - b. Establishment of the Telecom Facility at the requested height is necessary to provide service.

20.49.080 – Permit Implementation, Time Limits, Extensions, and Appeals.

- A. The process for implementation or “exercising” of permits issued for a Telecom Facility, time limits, and extensions, shall be in accordance with Chapter 20.54 (Permit Implementation, Time Limits, and Extensions).
- B. Appeals. Any appeal of the decision of the review authority of an application for a Telecom Facility shall be processed in compliance with Chapter 20.64 (Appeals).

20.49.090 – Agreement for Use of City-Owned or City-Held Trust Property.

When applying for a permit pursuant to this Chapter, all Telecom Facilities located on City-owned or City-held trust property shall require a license agreement approved as to form by the City Attorney, and as to substance (including, but not limited to, compensation, term, insurance requirements, bonding requirements, and hold harmless provisions) by the City Manager, consistent with provisions in the City Council Policy Manual.

Prior to entering into an agreement, the applicant shall obtain a MUP, CUP, LTP or ZC. Upon the issuance of a MUP, CUP, LTP or ZC, as required, and upon entering into an agreement, the applicant shall obtain any and all necessary ministerial permits, including, encroachment permits for work to be completed in the public right-of-way, and building permits, etc. All costs of said permits shall be at the sole and complete responsibility of the applicant. All work shall be performed in accordance with the applicable City standards and requirements.

20.49.100 – Modification of Existing Telecom Facilities.

Notwithstanding any provision in this Chapter of the Zoning Code, a request to modify an existing Facility that involves the Collocation of new transmission equipment, the removal of existing transmission equipment, or the replacement of existing transmission equipment shall be subject to a ministerial review and approval of a ZC without the processing of any discretionary permit provided that such modification does not substantially change the existing Facility from the original permit for the Facility. A substantial change means a single change, or series of changes over time that exceeds five percent (5%) of the physical dimension of the Telecom Facility approved as part of the original discretionary permit.

Each application submitted under this section for a modification to an existing Telecom Facility shall be accompanied by:

1. A detailed description of the proposed modifications to the existing Telecom Facility(ies);
2. A photograph or description of the Telecom Facility as originally constructed, if available; a current photograph of the existing Telecom Facility; and, a graphic depiction of the Telecom Facility after modification showing all relevant dimensions;
3. A detailed description of all construction that will be performed in connection with the proposed modification; and
4. A written statement signed and stamped by a professional engineer, licensed and qualified in California, attesting that the proposed modifications do not constitute a substantial change of the existing permitted facility.

Any permit issued will be conditioned, and may be revoked, and the Telecom Facility shall be required to be removed or restored to its pre-modification condition if:

- a. Any material statement made with respect to the Telecom Facility is false; or
- b. The modifications as actually made would have triggered a discretionary review.

20.49.110 – Operational and Radio Frequency Compliance and Emissions Report.

At all times, the operator shall ensure that its Telecom Facilities shall comply with the most current regulatory, operations standards, and radio frequency emissions standards adopted by the FCC. The operator shall be responsible for obtaining and maintaining the most current information from the FCC regarding allowable radio frequency emissions and all other applicable regulations and standards. Said information shall be made available by the operator upon request at the discretion of the Community Development Director.

Within thirty (30) days after installation of a Telecom Facility, a radio frequency (RF) compliance and emissions report prepared by a qualified RF engineer acceptable to the City shall be

submitted in order to demonstrate that the Telecom Facility is operating at the approved frequency and complies with FCC standards for radio frequency emissions safety as defined in 47 C.F.R. § 1.1307 *et seq.* Such report shall be based on actual field transmission measurements of the Telecom Facility operating at its maximum effective radiated power level, rather than on estimations or computer projections. If the report shows that the Telecom Facility does not comply with the FCC's 'General Population/Uncontrolled Exposure' standard as defined in 47 C.F.R. § 1.1310 Note 2 to Table 1, the Director shall require that use of the Telecom Facility be suspended until a new report has been submitted confirming such compliance.

Upon any proposed increase of at least ten percent (10%) in the effective radiated power or any proposed change in frequency use of the Telecom Facility by the Telecom Operator, the Telecom Operator shall be required to provide an updated, certified radio frequency (RF) compliance and RF emissions safety report.

A qualified independent radio frequency engineer selected and under contract to the City, may be retained to review said certifications for compliance with FCC regulations. All costs associated with the City's review of these certifications shall be the responsibility of the permittee, which shall promptly reimburse City for the cost of the review.

20.49.120 – Right to Review or Revoke Permit.

The reservation of right to review any permit for a Telecom Facility granted by the City is in addition to, and not in lieu of, the right of the City to review and revoke or modify any permit granted or approved hereunder for any violations of the conditions imposed on such permit.

20.49.130 – Removal of Telecom Facilities.

A. Discontinued Use. Any Telecom Operator who intends to abandon or discontinue use of a Telecom Facility must notify the Community Development Director by certified mail no less than thirty (30) days prior to such abandonment or discontinuance of use. The Telecom Operator or owner of the affected real property shall have ninety (90) days from the date of abandonment or discontinuance, or a reasonable additional time as may be approved by the Community Development Director, within which to complete one of the following actions:

1. Reactivate use of the Telecom Facility.
2. Transfer the rights to use the Telecom Facility to another Telecom Operator and the Telecom Operator immediately commences use within a reasonable period of time as determined by the Community Development Director.
3. Remove the Telecom Facility and restore the site.

B. Abandonment. Any Telecom Facility that is not operated for transmission and/or reception for a continuous period of ninety (90) days or whose Telecom Operator did not remove the Telecom Facility in accordance with Subsection A shall be deemed abandoned. Upon a

finding of abandonment, the City shall provide notice to the Telecom Operator last known to use such Facility and, if applicable, the owner of the affected real property, providing thirty days from the date of the notice within which to complete one of the following actions:

1. Reactivate use of the Telecom Facility.
2. Transfer the rights to use the Telecom Facility to another Telecom Operator who has agreed to reactivate the Telecom Facility within 30 days of the transfer.
3. Remove the Telecom Facility and restore the site.

C. Removal by City.

1. The City may remove an abandoned Telecom Facility, repair any and all damage to the premises caused by such removal, and otherwise restore the premises as is appropriate to be in compliance with applicable codes at any time after thirty (30) days following the notice of abandonment.
2. If the City removes an abandoned Telecom Facility, the City may, but shall not be required to, store the removed Telecom Facility or any part thereof. The owner of the premises upon which the abandoned Telecom Facility was located and all prior operators of the Telecom Facility shall be jointly liable for the entire cost of such removal, repair, restoration and storage, and shall remit payment to the City promptly after demand therefore is made. In addition, the City Council, at its option, may utilize any financial security required in conjunction with granting the telecom permit as reimbursement for such costs. Also, in lieu of storing the removed Telecom Facility, the City may convert it to the City's use, sell it, or dispose of it in any manner deemed by the City to be appropriate.

D. City Lien on Property. Until the cost of removal, repair, restoration, and storage is paid in full, a lien shall be placed on the abandoned personal property and any real property on which the Telecom Facility was located for the full amount of the cost of removal, repair, restoration and storage. The City Clerk shall cause the lien to be recorded with the Orange County Recorder, with the costs of filing, processing, and release of such City Lien being added to the other costs listed in this subsection.

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ATTACHMENT PC 2

Comment Letters

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July 19, 2012

VIA ELECTRONIC MAIL

Newport Beach Planning Commission
c/o Janet Johnson Brown, Associate Planner
City of Newport Beach
3300 Newport Blvd.
Newport Beach, CA 92663
jbrown@newportbeachca.gov

Re: Proposed Amendments to Wireless Telecommunications Facilities Ordinance

Dear Ms. Brown,

PCIA—The Wireless Infrastructure Association (“PCIA”)¹ and the California Wireless Association (“CalWA”)² writes to provide comment on the City of Newport Beach’s proposed amendment to the Newport Beach Municipal Code to update regulations regarding wireless telecommunications facilities in light of the scheduled public hearing on the matter before the Planning Commission on Thursday, July 19, 2012. Attached please find the proposed amendments marked with comments. PCIA and CalWA respectfully request that Planning Commission defer action on this item until the industry has had an opportunity to sit down with staff and discuss the concerns reflected within this letter and in the attached mark-up.

PCIA and CalWA applaud the City of Newport Beach for recognizing that there have been numerous changes in Federal and State law regarding local regulation of wireless facilities, as well as a tremendous increase in the demand for wireless services that required the industry to change how it responds and keeps up with demand from its subscribers, especially in sophisticated communities like Newport Beach. We encourage the City to craft an ordinance that enables logical and intelligent deployment with an objective set of standards that comply with state and federal law and allows the timely provision of quality wireless service. To this end, in order to ensure that Newport Beach’s efforts to modernize its wireless ordinance are as comprehensive as possible, PCIA and CalWA offer the attached mark-up of the draft amendments.

¹PCIA is the national trade association representing the wireless infrastructure industry. PCIA’s members develop, own, manage, and operate towers, rooftop wireless sites, and other facilities for the provision of all types of wireless, broadcasting and telecommunications services. With a mandate to facilitate the deployment of wireless infrastructure, PCIA and its members partner with communities across the nation to effect solutions for wireless infrastructure deployment that are responsive to the unique sensitivities and concerns of these communities.

²CalWA is a non-profit organization made up of volunteers who work in the wireless/telecommunications industry throughout California. Its goal is to raise awareness about the benefits of and to promote the wireless industry, to educate the public and political leaders on issues of importance to the wireless industry, and to cultivate working relationships within and between the industry, the public and political leaders.



Despite the importance of wireless services and its potential for job creation, local review of the placement of wireless facilities remains a persistent barrier to the deployment of wireless infrastructure. For example, the proposed amendments to Newport Beach's Municipal Code could better facilitate the deployment of wireless infrastructure in order to bring wireless service to Newport Beach's residents. PCIA and CalWA hope to work together with the Planning Commission to find a solution for wireless infrastructure deployment that is responsive to the City of Newport Beach's needs and concerns. For this reason, PCIA and CalWA urge that Planning Commission defer action on this item to allow time to consider and discuss the industry's concerns.

The Need for Wireless Infrastructure

Wireless services, from basic voice communication to mobile broadband, enable communication, productivity, mobility, and public safety. Wireless infrastructure is the backbone of wireless networks; without it, wireless services cannot be delivered to users. Wireless infrastructure enables use of spectrum by providing the vital link between the end-user and the network. The strategic deployment of wireless infrastructure improves the efficient use of limited spectrum resources, which in turn improves the performance of wireless services.

Wireless providers are currently undertaking a multi-faceted effort to deliver next-generation wireless services, such as 4G LTE, in addition to ensuring that current and next-generation networks have the capacity to handle the surge in traffic that comes with the increased adoption rates of smartphones, tablets and other data devices. Wireless networks must adapt to growing capacity demands due to an 1,800 percent increase in traffic on U.S. wireless networks in the last four years³ and a projected growth of eighteen times current levels of mobile data traffic in the next five years.⁴ Mobile Internet users are projected to outnumber wireline Internet users by 2015, when a majority of Americans will utilize a wireless device as their primary internet access tool.⁵ This will result in two billion networked mobile devices by 2015.⁶

The need for rapid deployment extends beyond mere consumer convenience. More than 70 percent of all emergency calls are placed using a wireless device.⁷ The ability to access fire, rescue and police services may be significantly hindered without wireless infrastructure, especially for those relying on wireless as their sole form of voice communications. As noted by the Federal Communications Commission ("FCC"),

[T]he deployment of facilities without unreasonable delay is vital to promote public safety, including the availability of wireless 911, throughout the nation. The importance of wireless communications for public safety is critical, especially as consumers

³ Mobile Future, 2011 Mobile Year In Review (Dec. 2011), *available at* <http://mobilefuture.org/page/-/images/2011-MYIR.pdf>.

⁴ Quentin Hardy, The Explosion of Mobile Video, N.Y. Times, Feb. 14, 2012, *available at* <http://bits.blogs.nytimes.com/2012/02/14/the-explosion-of-mobile-video/>.

⁵ Hayley Tsukayama, IDC: Mobile Internet Users to Outnumber Wireline Users by 2015, Washington Post, Sept. 12, 2011, *available at* http://www.washingtonpost.com/blogs/post-tech/post/idc-mobile-internet-users-to-outnumber-wireline-users-by-2015/2011/09/12/gIAkZP7MK_blog.html?wprss=post-tech.

⁶ Mobile Future, 2011 Mobile Year In Review.

⁷ FCC.gov, Guide: Wireless 911 Services, *available at* <http://www.fcc.gov/guides/wireless-911-services>.



increasingly rely upon their personal wireless service devices as their primary method of communication.⁸

As NENA observes:

Calls must be able to be made from as many locations as possible and dropped calls must be prevented. This is especially true for wireless 9-1-1 calls which must get through to the right Public Safety Answering Point (“PSAP”) and must be as accurate as technically possible to ensure an effective response. Increased availability and reliability of commercial and public safety wireless service, along with improved 9-1-1 location accuracy, all depend on the presence of sufficient wireless towers.⁹

For this reason, decisions on siting requests made by the personal wireless service industry were not intended by Congress to be subjected “to any but the generally applicable time frames for zoning decision[s].”¹⁰ Thus, the adoption of special procedural schemes unique to wireless siting requests should be avoided.

The FCC Shotclock Declaratory Ruling and the California Permit Streamlining Act

In addition to the provisions of Section 337(c)(7) of the Communications Act of 1934 referred to in the staff report, subsection (B)(ii) of that section contains another requirement that the City should keep in mind when crafting its new ordinance. That provision requires that a “local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.”

The FCC recently adopted a Declaratory Ruling on November 18, 2009 under this subsection holding that “a ‘reasonable period of time’ is, presumptively, 90 days to process personal wireless service facility siting applications requesting collocations, and, also presumptively, 150 days to process all other applications.”¹¹ Given the rate at which demand for advanced wireless services has been growing, and in particular the growth in the demand for bandwidth as a result of adoption of smart phones and wireless-enabled laptops and tablets, the need for speedy local approvals of proposed wireless deployments has become truly critical to providing the wireless services consumers demand.

Indeed, the FCC’s presumptive timeframe for action may be superfluous given that California law has, for decades, contained absolute deadlines by which action must be taken. As you are no doubt aware, the California Permit Streamlining Act imposes a 60-day time limit for approving or denying a requested permit after a project has been determined to be categorically

⁸ *Petition for Declaratory Ruling To Clarify Provisions of Section 332(C)(7)(B) To Ensure Timely Siting Review and To Preempt Under Section 253 State and Local Ordinances That Classify All Wireless Siting Proposals as Requiring a Variance*, Declaratory Ruling, 24 FCC Rcd 13994, 14021 ¶ 71 (2009) (“*Shot Clock Ruling*”), *recon. denied*, 25 FCC Rcd 11157 (2010), *aff’d*, *City of Arlington, Tex., et al. v. FCC*, 2012 U.S. App. LEXIS 1252 (5th Cir. 2012).

⁹ *Shot Clock Ruling*, at 36.

¹⁰ H.R. Conf. Rep. No. 104-458, 104th Congress, 2nd Sess. 208 (1996).

¹¹ *Shotclock Ruling*.



exempt from CEQA¹² or a negative declaration or mitigated negative declaration has been adopted.¹³

The Wireless Provisions in Middle Class Tax Relief and Job Creation Act of 2012

Staff failed to mention the Middle Class Tax Relief and Job Creation Act of 2012, enacted with bipartisan support and signed into law by President Obama on February 22, 2012. One of the measures included in the Act was the creation of a nationwide interoperable broadband network for first responders. In addition to authorizing the FCC to allocate necessary spectrum for this new interoperable network, the Act also contained provisions designed to establish voluntary incentive auctions of wireless spectrum, which are expected to raise \$15 billion over the next eleven years. Seven billion dollars of the auction proceeds have been allocated for public safety broadband network build out.

The Act reflects an implicit acknowledgement that realizing the financial viability of the spectrum auctioned depends on the ease with which purchasers can deploy the infrastructure needed to utilize it. At the same time, it allays local concerns over the potential impact of the construction of new sites. In a carefully crafted attempt to address both industry and local concerns, Section 6409 of the Act streamlines, and thereby incentivizes the use of, modification of existing sites in lieu of new builds. Although the staff proposals reflect a similar recognition of the need for streamlined review of modifications, PCIA and CalWA provide herewith a detailed explanation of this recent law due to concerns that the definitions provided in the report fail to reflect those adopted and utilized by the FCC.

Section 6409 of the Act requires state and local governments to approve an eligible facilities request for the modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station. Section 6409 applies to "eligible facilities requests" for modification of existing wireless towers and base stations. The Act defines "eligible facilities request" as any request for modification of an existing wireless tower or base station that involves:

- Collocation of new transmission equipment;
- Removal of transmission equipment; or
- Replacement of transmission equipment.

Many of the terms employed in the section are concepts that were hammered out in negotiations between local government and industry representatives in an agreement that was adopted by reference in regulations promulgated by the FCC. Thus, for example, "collocation" has been defined as "the mounting or installation of an antenna on an existing tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes."¹⁴

¹²Gov. Code § 65950(a)(4).

¹³Gov. Code § 65950(a)(3).

¹⁴Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (2001), available at 47 C.F.R. Part I, Appendix B ("Collocation Agreement"). See also *Petition for Declaratory Ruling To Clarify Provisions of Section 332(C)(7)(B) To Ensure Timely Siting Review and To Preempt Under Section 253 State and Local Ordinances That Classify All Wireless Siting Proposals as Requiring a Variance*, Declaratory Ruling, 24

The same agreement also addressed the issue of what constitutes a substantial change in the size of a tower:

- The mounting of the proposed antenna on the tower would increase the existing height of the tower by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to avoid interference with existing antennas; or
- The mounting of the proposed antenna would involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter; or
- The mounting of the proposed antenna would involve adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable; or
- The mounting of the proposed antenna would involve excavation outside the current tower site, defined as the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site.¹⁵

In this agreement, a "tower" is defined as "any structure built for the sole or primary purpose of supporting FCC-licensed antennas and their associated facilities."¹⁶ While the concept of a "base station" is not referenced in the agreement, the term has a long-established meaning consistently used throughout both FCC regulations and case law, namely a fixed location from which wireless signals are transmitted. For example, FCC regulations define a "base station" as "[a] station at a specified site authorized to communicate with mobile stations;" or "A land station in the land mobile service."¹⁷ We urge the Planning Commission to use these well recognized definitions within its Ordinance.

FCC Rcd 13994, 14021 1171 (2009) (*"Shot Clock Ruling"*), *recon. denied*, 25 FCC Rcd 11157 (2010), *aff'd*, City of Arlington, Tex., et al. v. FCC, 2012 U.S. App. LEXIS 1252 (5th Cir. 2012).

¹⁵Collocation Agreement, note, above.

¹⁶*Id.*

¹⁷See, e.g., 47 C.F.R. §§24.5, 90.7.



Conclusion

Reliable wireless communications are no longer a luxury. Wireless facilities provide a platform for broadband accessibility, creating a link from the City of Newport Beach to the world through high-speed Internet access. The City of Newport Beach has an opportunity to facilitate expanded wireless coverage to its citizens, businesses, and first responders by moving forward with amending its code in consideration of the wireless infrastructure industries' suggestions provided herewith.

PCIA and CalWA hope to participate in the ordinance revision process as it develops, if Planning Commission defers action on this item to consider the industry's concerns. We appreciate your support to further our mutual goal of implementing and deploying responsible and timely wireless infrastructure to serve the City of Newport Beach, CA.

Sincerely,

_____/s/_____
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From: Cynthia Jolly [cynthia@mobilitie.com]
Sent: Wednesday, July 24, 2013 3:23 PM
To: Campbell, James
Cc: Chris Glass
Subject: RE: Newport Beach Telecom Ordinance update
Attachments: Newport Beach Draft Telecom ordinance 2013 - Mobilitie LLC
Comments.docx

Jim,

Attached are Mobilitie's comments to the Newport Beach Draft Telecom ordinance. We welcome the opportunity to discuss if you have questions prior to the planned Planning Commission study session on August 8th.

Thank you,

Cyndi Jolly | Director, Network Strategy
cynthia@mobilitie.com



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Chapter 20.49 – Wireless Telecommunications Facilities

Sections

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20.49.010 – Purpose

- A. The purpose of this Chapter is to provide for wireless telecommunication facilities (~~“Telecom Facilities”~~) “TELECOM FACILITY” IS DEFINED IN THE DEFINITIONS SECTION BELOW on public and private property consistent with state and federal law while ensuring public safety, reducing the visual effects of telecom equipment on public streetscapes, protecting scenic, ocean and coastal public views, and otherwise mitigating the impacts of such facilities. More specifically, the regulations contained herein are intended to; 1) encourage the location of Antennas in non-residential areas, 2) encourage Collocation at new and existing Antenna sites, and 3) encourage Telecom Facilities to be located in areas where adverse visual impacts on the community and public views are minimized.
- B. The provisions of this Chapter are not intended and shall not be interpreted to prohibit or to have the effect of prohibiting telecom services. This Chapter shall be applied to providers, operators, and maintainers of wireless services regardless of whether authorized by state or federal regulations. This Chapter shall not be applied in such a manner as to unreasonably discriminate among providers of functionally equivalent telecom services.
- C. All Telecom Facilities approved under this Chapter shall utilize ~~the most efficient and least obtrusive available~~ commercially reasonable technology in order to minimize the number of Telecom Facilities in the City and reduce their visual impact on the community and public views.
[WHAT DOES LEAST OBTRUSIVE TECHNOLOGY MEAN AND HOW CAN THIS STANDARD MINIMIZE THE NUMBER OF TELECOM FACILITIES? “MOST EFFICIENT” AND “LEAST OBTRUSIVE” REQUIREMENTS CAN CONTRADICT EACH OTHER (YOU CAN’T ALWAYS ACCOMPLISH BOTH AND WILL ELIMINATE FUTURE COLLOCATION OPPORTUNITIES).

DESIGNING A SITE FOR FUTURE COLLOCATION WILL MINIMIZE THE NUMBER OF TELECOM FACILITIES.]

20.49.020 – Effect of Chapter

- A. Regulatory Scope.** These regulations are applicable to all Telecom Facilities providing voice and/or data transmission such as, but not limited to, cell phone, internet and radio relay stations.
- B. Permit and/or Agreement Required.** Prior to construction of any Telecom Facility in the City, the applicant shall obtain a Minor Use Permit (MUP), Conditional Use Permit (CUP), Limited Term Permit (LTP), or Zoning Clearance (ZC), [ARE THERE CIRCUMSTANCES WHERE AN AUTHORIZATION/APPROVAL OTHER THAN THE FOREGOING IS REQUIRED? IF SO, THEN INCLUDE HERE “or other authorization or approval required under the Municipal Code,”] depending on the proposed location, and Antenna Class, and method of installation [WHAT DOES “METHOD OF INSTALLATION” MEAN? THE PERMIT TYPE WOULD BE BASED ON HOW THE TELECOM FACILITY IS ENGINEERED/DESIGNED, NOT ON HOW THE TELECOM FACILITY IS INSTALLED BY THE CONTRACTOR.], in accordance with Section 20.49.070 (Permit Review Procedures). Applicants who obtain a MUP, CUP, LTP, or ZC (and an encroachment permit, if required) for any Telecom Facility approved to be located on any City-owned property or City-held Trust property, shall enter into an agreement prepared and executed by the City Manager or its designee prior to construction of the Telecom Facility, consistent with Section 20.49.090 (Agreement for Use of City-owned or City-held Trust Property).
- C. Exempt Facilities.** The following types of facilities are exempt from the provisions of this Chapter:
1. Amateur radio antennas and receiving satellite dish antennas, and citizen band radio antennas regulated by Section 20.48.190 (Satellite Antennas and Amateur Radio Facilities).
 2. Dish and other antennas subject to the FCC Over-the-Air Reception Devices (“OTARD”) rule, 47 C.F.R. § 1.4000 that are designed and used to receive video programming signals from (a) direct broadcast satellite services, or (b) television broadcast stations, or (c) for wireless cable service.
 3. During an emergency, as defined by Title 2 of the NBMC, the City Manager, Director of Emergency Services or Assistant Director of Emergency Services shall have the authority to approve the placement of a Telecom Facility in any district on a temporary basis not exceeding ninety (90) calendar days from the date of authorization. Such authorization may be extended by the City on a showing of good cause.
 4. Facilities exempt from some or all of the provisions of this Chapter by operation of state or federal law to the extent so determined by the City.

5. Systems installed or operated at the direction of the City or its contractor.
6. Systems installed entirely within buildings for the sole purpose of providing wireless telecommunications services or data transmission services to building occupants.

D. Other Regulations. Notwithstanding the provisions of this Chapter, all Telecom Facilities within the City shall comply with the following requirements:

1. Rules, regulations, ~~policies,~~ or conditions in any permit, license, or agreement issued by a local, state or federal agency which has jurisdiction over the Telecom Facility.
2. Rules, regulations and standards of the Federal Communications Commission (FCC) and the California Public Utilities Commission (CPUC).

E. Regulations not in Conflict or Preempted. All Telecom Facilities within the City shall comply with the following requirements unless in conflict with or preempted by the provisions of this Chapter or any other provision of the Municipal Code:

1. **All applicable** City design guidelines and standards. [HOW DO WE KNOW WHICH GUIDELINES AND STANDARDS ARE APPLICABLE? TOO BROAD.]
2. Requirements established by any other provision of the Municipal Code and by any other ordinance and regulation of the City.

F. Legal Nonconforming Telecom Facility. Any Telecom Facility that is lawfully constructed, erected, or approved pursuant to an application that was complete prior to the effective date of this Chapter that does not conform to the requirements of this Chapter but is otherwise operating in compliance with all applicable laws, ~~and which Facility does not conform to the requirements of this Chapter~~ shall be accepted and allowed as a legal nonconforming Telecom Facility ~~if otherwise approved and constructed~~. Legal nonconforming Telecom Facilities shall comply at all times with the laws, ordinances, and regulations in effect at the time the application was deemed complete, ~~and any applicable federal and state laws as they may be amended or enacted,~~ and shall at all times comply with any conditions of approval authorized under the Municipal Code.

20.49.030 – Definitions.

For the purposes of this Chapter, the following definitions shall apply:

- A. Antenna.** Antenna means a device used to transmit and/or receive radio or electromagnetic waves between earth and/or satellite-based systems, such as reflecting discs, panels, microwave dishes, whip antennas, ~~Antennas,~~ arrays, or other similar antennas or devices.
- B. Antenna Array.** Antenna Array means Antennas having transmission and/or reception elements extending in more than one direction, and directional Antennas mounted upon

and rotated through a vertical mast or tower interconnecting the beam and Antenna support, all of which elements are deemed to be part of the Antenna.

C. Antenna Classes. Antenna Classes are Telecom Facilities and the attendant Support Equipment separated into the following distinct classes:

1. Class 1 (Stealth/Screened): a Telecom Facility with Antennas mounted on an existing or proposed non-residential building or other structure not primarily intended to be an antenna support structure where Antennas and Support Equipment, including the base station, are ~~fully~~-screened so that they are not visible to the general public.
2. Class 2 (Visible): a Telecom Facility that does not fall into Class 1 with Antennas mounted on an existing non-residential building, structure, pole, light standard, Utility Tower, Wireless Tower and/or Lattice Tower.
3. Class 3 (Public Right-of-Way Installations): a Telecom Facility that does not fall into Class 1 or 2 with Antennas installed on an existing or proposed structure located in the public right-of-way.
4. Class 4 (Freestanding Structure): a Telecom Facility that does not fall into Class 1, 2 or 3 with Antennas mounted on a new freestanding structure constructed for the sole or primary purpose of supporting the Telecom Facility.
5. Class 5 (Temporary): a Telecom Facility that may fall into Class 1, 2, 3 or 4 including with associated Support Equipment that is installed at a site on a temporary basis pursuant to a Limited Term Permit. A Class 5 installation may also be installed in connection with a special event upon the approval of a Special Events Permit pursuant to Chapter 11.03 without a Limited Term Permit.

D. Base Station. Base Station means the electronic equipment at a Telecom Facility installed and operated by the Telecom Operator that together perform the initial signal transmission and signal control functions. Base Station does not include the Antennas and Antenna support structure, or the Support Equipment, nor does it include any portion of DAS.

E. City-owned or City-held Trust Property. City-owned or City-held Trust Property means all real property and improvements owned, operated or controlled by the City, other than the public right-of-way, within the City's jurisdiction, including but is not limited to City Hall, Police and Fire facilities, recreational facilities, parks, libraries, monuments, signs, streetlights and traffic control standards.

F. Collocation. Collocation means an arrangement whereby ~~multiple~~ Telecom Facilities are installed for more than one wireless service provider or operator on the same building or structure.

G. Distributed Antenna System, DAS. Distributed Antenna System (DAS) means a network of one or more Antennas and fiber optic nodes typically mounted to streetlight poles, or utility

structures, which provide access and signal transfer services to one or more third-party wireless service providers. DAS also includes the equipment location, sometimes called a “hub” or “hotel” where the DAS network is interconnected with third-party wireless service providers to provide the signal transfer services.

- H. **FCC.** FCC means the Federal Communications Commission, the federal regulatory agency charged with regulating interstate and international communications by radio, television, wire, satellite, and cable.
- I. **Feasible.** Feasible means capable of being accomplished in a successful manner within a reasonable period of time, taking into account environmental, physical, engineering, structural, legal and technological factors.
- J. **Lattice Tower.** Lattice Tower means a freestanding open framework structure used to support Antennas, typically with three or four support legs of open metal crossbeams or crossbars.
- K. **Monopole.** Monopole means a single free-standing pole or pole-based structure solely used to act as or support a Telecom Antenna or Antenna Arrays.
- L. **Operator or Telecom Operator.** Operator or Telecom Operator means any person, firm, corporation, company, or other entity that directly or indirectly owns, leases, runs, manages, or otherwise controls a Telecom Facility ~~or facilities~~ within the City. [DIFFERENTIATE BETWEEN OPERATOR OF THE TELECOM FACILITY AND THE TELECOM OPERATOR (TELECOM FACILITY OWNER VS. TELECOM FACILITY TENANT/CARRIER)].

TELECOM FACILITY OWNER OPERATES AND MAINTAINS THE TELECOM FACILITY, BUT THE TELECOM FACILITY TENANT/CARRIER (WHO LEASE FROM TELECOM FACILITY OWNERS) MAY HOLD A SEPARATE PERMIT FOR THEIR EQUIPMENT AND ARE RESPONSIBLE FOR COMPLIANCE WITH THE FCC AND WOULD SUPPLY THE RF EMISSION SAFETY REPORTS (REFERENCE SECTION 20.49.110).

NOTE: TELECOM FACILITY OWNERS GENERALLY REQUIRE IN THEIR CARRIER AGREEMENTS THAT THESE ARE COMPLIED WITH.]

- ~~M. **Public Right of Way.** Public Right of Way or (“PROW”) means the improved or unimproved surface of any street, or similar public way of any nature, dedicated or improved for vehicular, bicycle, and/or pedestrian related use. PROW includes public streets, roads, lanes, alleys, sidewalks, medians, parkways and landscaped lots. [PROW IS DEFINED IN TITLE 13.]~~

- ~~N.M.~~ **Stealth or Stealth Telecom Facility.** Stealth or Stealth Telecom Facility means a Telecom Facility in which the Antenna, and the Support Equipment, are completely hidden from view in a monument, cupola, pole-based structure, or other concealing structure which either mimics, or which also serves as, a natural or architectural feature. Concealing structures

which are obviously not such a natural or architectural feature to the average observer do not qualify within this definition. A false tree is not a Stealth Telecom Facility.

P.N. Support Equipment. Support Equipment means the physical, electrical and/or electronic equipment included within a Telecom Facility used to house, power, and/or contribute to the processing of signals from or to the Telecom Facility's Antenna or Antennas, including but not limited to a base station, cabling, air conditioning units, equipment cabinets, pedestals, and electric service meters. Support Equipment does not include DAS, Antennas or the building or structure to which the Antennas or other equipment are attached.

P.O. Telecommunication(s) Facility, Telecom Facility, Telecom Facilities, Wireless Telecommunications Facility, ~~or Facility~~ [FACILITY IS DEFINED IN TITLE 13]. Telecommunication(s) Facility, Telecom Facility, Telecom Facilities, or Wireless Telecommunications Facility, ~~or simply Facility or Facilities~~ means an installation that sends and/or receives wireless radio frequency signals or electromagnetic waves, including but not limited to directional, omni-directional and parabolic antennas, structures or towers to support receiving and/or transmitting devices, supporting equipment and structures, ~~and the land or structure on which they are all situated~~. The term does not include mobile transmitting devices, such as vehicle or hand held radios/telephones and their associated transmitting antennas.

Q.P. Utility Pole. Utility Pole means a single freestanding pole used to support services provided by a public or private utility provider.

R.Q. Utility Tower. Utility Tower shall mean an open framework structure (see lattice tower) or steel pole used to support electric transmission facilities.

S.R. Wireless Tower. Wireless Tower means any structure built for the sole or primary purpose of supporting Antennas used to provide wireless services authorized by the FCC. A Distributed Antenna System (DAS) installed ~~pursuant to a Certificate of Public Convenience and Necessity (CPCN) issued by the California Public Utilities Commission~~ on a water tower, utility tower, **street light**, or other structures built or rebuilt or replaced primarily for a purpose other than supporting wireless services authorized by the FCC, including any structure installed pursuant to California Public Utility Code Section 7901, is not a Wireless Tower for purposes of this definition. For an example only, a prior-existing light standard which is replaced with a new light standard to permit the addition of Antennas shall not be considered a Wireless Tower, but rather a replacement light standard. [REFERENCE 20.49.050 (B)(4) BELOW.]

20.49.050 – Location Preferences.

A. Preferred Locations. To limit the adverse visual effects of and proliferation of new or individual Telecom Facilities in the City, the following list establishes the order of preference

for the location and installation of Telecom Facilities, from highest priority location and technique to lowest.

1. Collocation ~~of a new facility at an existing facility.~~

2. Class 1.

3. Class 2.

4. Class 3.

5. Class 4.

6. Class 5.

B. Prohibited Locations. Telecom Facilities are prohibited in the following locations to the extent such prohibitions are not inconsistent with federal and state law:

1. On properties zoned for single-unit or two-unit residential development, including equivalent PC District designation.

2. On properties zoned for multi-unit residential development and mixed-use development where the maximum allowable number of dwelling units is four (4) units.

3. In the Open Space (OS) zoning district, **unless** Telecom Facilities are collocated on an existing Utility Tower within a utility easement area, or collocated on an existing Telecom Facility. [CAN AN EXISTING TELECOM FACILITY IN THE OS ZONING DISTRICT BE MODIFIED FOR COLLOCATION IF THE CURRENT DESIGN IS INADEQUATE (I.E. INCREASE STRUCTURE HEIGHT AND/OR GROUND SPACE)?]

~~4. On streetlights.~~

[THE DEFINITION OF WIRELESS TOWER INCLUDES STREET LIGHTS AND IS REFERENCED IN CLASS 3 OF PREFERRED LOCATIONS, BUT ARE LISTED HERE AS A PROHIBITED LOCATION.]

C. Installations in the Public Right-of-Way. All Telecom Facilities proposed to be located in the public right-of way shall comply with the provisions of Title 13. Antenna installations on an existing or replacement streetlight pole shall be compatible in design, scale, and proportion to streetlights and the pole on which they are mounted.

D. Collocation Installations. A new Telecom Facility proposed within one thousand (1,000) feet of an existing Telecom Facility shall be required to collocate on the same building or structure as the existing Telecom Facility.

1. Exception: If the ~~reviewing authority~~City determines, based on ~~compelling sufficient~~ evidence submitted by the applicant, that Collocation of one or more new Telecom

Facilities within one thousand (1,000) feet of an existing Telecom Facility is not Feasible, then such Collocation shall not be required.

2. Condition Requiring Future Collocation. In approving a Telecom Facility, the ~~review authority~~City may impose a condition of approval providing for future Collocation of Telecom Facilities by other carriers at the same site. [HOW WOULD THIS CONDITION BE WORDED?]

20.49.060 – General Development and Design Standards.

- A. General Criteria.** ~~All Telecom Facilities shall employ design techniques to minimize visual impacts and provide appropriate screening to result in the least intrusive means of providing the service. Such techniques shall be employed to make the installation, appearance and operations of the Telecom Facility as visually inconspicuous as possible. [REDUNDANT - SEE COMMENT IN 20.49.010(A) ABOVE]~~ To the greatest extent Feasible, and depending on where its located, Telecom Facilities shall be designed to minimize the visual impact of the Telecom Facility by means of location, placement, height, screening, landscaping, and shall be compatible with existing architectural elements, building materials, other building characteristics, and the surrounding area.

In addition to the other design standards of this Section, the following criteria shall be considered by the review authority in connection with its processing of any MUP, CUP, LTP, or ZC for a Telecom Facility to the extent Feasible:

1. Blending. The extent to which the proposed Telecom Facility blends into the surrounding environment or is architecturally compatible and integrated into the structure.
2. Screening. The extent to which the proposed Telecom Facility is concealed or screened by existing or proposed new topography, vegetation, buildings or other structures.
3. Size. The total size of the proposed Telecom Facility, particularly in relation to surrounding and supporting structures.
4. Location. Proposed Telecom Facilities shall be located so as to utilize existing natural or man-made features in the vicinity of the Telecom Facility, including topography, vegetation, buildings, or other structures to provide the greatest amount of visual screening and blending with the predominant visual backdrop.

- B. Public View Protection.** Telecom Facilities involving a site adjacent to an identified public view point ~~or corridor~~, as identified in General Plan Policy NR 20.3 (Public Views), shall be reviewed to evaluate the potential impact to public views consistent with Section 20.30.100 (Public View Protection). [A BETTER DEFINITION AND DEPICTION FOR CORRIDOR IS NEEDED (I.E. "SCENIC CORRIDOR SHALL BE ESTABLISHED ON A MAP")].

- C. Height.**

1. Telecom Facilities installed on buildings or other structures shall comply with the base height limit established in Part 2 (Zoning Districts, Allowable Uses, and Zoning District Standards) for the zoning district in which the Telecom Facility is located.
 2. Applications for the installation of Telecom Facilities proposed to be greater than the base height limit for the zoning district in which the Telecom Facility is located shall be subject to review and action by the Planning Commission. The Planning Commission may approve or conditionally approve a CUP for a Telecom Facility to exceed the base height limit after making all of the required findings in Section 20.49.070. ~~I~~^H (Permit Review Procedures).
 3. All Telecom Facilities shall comply with Antenna height restrictions, if any, required by the Federal Aviation Administration, and shall comply with Section 20.30.060.E. (Airport Environs Land Use Plan (AELUP) for John Wayne Airport and Airport Land Use Commission (ALUC) Review Requirements) as may be in force at the time the Telecom Facility is permitted or modified.
 4. ~~Antennas shall be installed at the minimum height possible to provide average service to the Telecom Operator's proposed service area. In any case, n~~To the extent permitted by federal and state law, no Antenna or other telecom equipment or screening structure shall extend higher than the following maximum height limits: [AVERAGE SERVICE TO PROPOSED AREA IS UNACCEPTABLE.]
 - a. Telecom Facilities installed on streetlight standards, Utility Poles, Utility Towers or other similar structures within the public right-of-way shall not exceed 35 feet in height above the finished grade.
 - b. Telecom Facilities may be installed on existing Utility Poles or Utility Towers that exceed 35 feet above the finished grade where the purposes of the existing Utility Pole or Utility Tower is to carry electricity or provide other wireless data transmission provided that the top of the Antenna does not extend above the top of the Utility Pole or Utility Tower.
 - c. Telecom Facilities installed in ground-mounted flagpoles may be installed at a maximum height of 35 feet.
- D. Setbacks.** Proposed Telecom Facilities shall comply with the required setback established by the development standards for the zoning district in which the Telecom Facility is proposed to be located. Setbacks shall be measured from the part of the Telecom Facility closest to the applicable lot line or structure.
- E. Design Techniques.** Design techniques shall result in the installation of a Telecom Facility that is in scale with the surrounding area, hides the installation from predominant views from surrounding properties, and prevents the Telecom Facility from visually dominating the surrounding area. Design techniques may include the following:

1. Screening elements to disguise, or otherwise hide the Telecom Facility from view from surrounding uses.
2. Painting and/or coloring the Telecom Facility to blend into the predominant visual backdrop.
3. Siting the Telecom Facility to utilize existing features (buildings, topography, vegetation, etc.) to screen or hide the Telecom Facility.
4. Utilizing simulated natural features (trees, rocks, etc.) to screen or hide the Telecom Facility.

~~5. Providing Telecom Facilities of a size that, as determined by the City, is not visually obtrusive such that any effort to screen the Telecom Facility would create greater visual impacts than the Telecom Facility itself.~~

F. Screening Standards. For Collocation installations, the screening method shall be materially similar to those used on the existing Telecom Facility, and shall not diminish the screening of the Telecom Facility. If determined necessary by the review authority, use of other improved and appropriate screening methods may be required to screen the Antennas and Support Equipment from public view. The Following is a non-exclusive list of potential design and screening techniques that should be considered:

1. For Class 1 (Stealth/Screened) Antenna Installations:
 - a. All Telecom Facility components, including all Antenna panels and Support Equipment, shall be fully screened, and mounted either inside the building or structure, or behind the proposed screening elements and not on the exterior face of the building or structure.
 - b. Screening materials shall match in color, size, proportion, style, and quality with the exterior design and architectural character of the structure and the surrounding visual environment. If determined necessary by the reviewing authority, screening to avoid adverse impacts to views from land or buildings at higher elevations shall be required.
 - c. In conditions where the Antennas and Support Equipment are installed within a new freestanding structure, (an architectural feature such as a steeple, religious symbol or tower, cupola, clock tower, sign, etc.), the installation shall blend in the predominant visual backdrop so it appears to be a decorative and attractive architectural feature.
2. For Class 2 (Visible) Antenna Installations:
 - a. Building or structure mounted Antennas shall be painted or otherwise coated to match or complement the predominant color of the structure on which they are

mounted and shall be compatible with the architectural texture and materials of the building to which the Antennas are mounted. ~~No cables and mounting brackets or any other associated equipment or wires shall be visible from above, below or the side of the Antennas.~~

- b. All Antenna components and Support Equipment shall be treated with exterior coatings of a color and texture to match the predominant visual background and/or adjacent architecture so as to visually blend in with the surrounding development. Subdued colors and non-reflective materials that blend with surrounding materials and colors shall be used.

3. For Class 3 (Public Right-of-Way) Antenna Installations:

- a. Whenever Feasible, new Antennas proposed to be installed in the public right-of-way shall be placed on existing or replacement utility structures, light standards, or other existing vertical structures. Antenna installations on existing or replacement **streetlight** poles, traffic control standards, or Utility Poles shall be screened by means of canisters, radomes, shrouds other screening measures whenever Feasible, and treated with exterior coatings of a color and texture to match the existing pole. [REFERENCE 20.49.050 (B)(4) ABOVE.]
- b. If Antennas are proposed to be installed without screening, they shall be flush-mounted to the pole and shall be treated with exterior coatings of a color and texture to match the existing pole.
- c. If a new pole is proposed to replace an existing pole, the replacement pole shall be consistent with the size, shape, style and design of the existing pole, including any attached light arms.

4. For Class 4 (Freestanding Structure) Antenna Installations:

- a. For a false rock, the proposed screen structure shall reasonably match in scale and color other rock outcroppings in the general vicinity of the proposed site, provided such rock outcroppings exist. ~~A false rock screen may not be considered appropriate in areas that do not have natural rock outcroppings.~~
- b. The installation of a false tree (such as but without limitation a monopine or monopalm, or false shrubbery) shall be designed for and located in a setting that is compatible with the proposed screening method. Such installations shall be situated so as to utilize existing natural or manmade features including topography, vegetation, buildings, or other structures to provide the greatest amount of visual screening. For false trees or shrubbery installations, all Antennas and Antenna supports shall be contained within the canopy of the tree design, and other vegetation comparable to that replicated in the proposed screen structure shall be prevalent in the immediate vicinity of the antenna site, and the addition of new

comparable living vegetation may be necessary to enhance the false tree or shrubbery screen structure.

- c. For installations of a flagpole, the pole shall not exceed 24 inches in width at the base of the flagpole and also shall not exceed 20 inches in width at the top of the flagpole. [THIS DOESN'T WORK BECAUSE 24 INCHES IN WIDTH AT THE TOP OF THE FLAGPOLE IS REQUIRED TO INCORPORATE THE ANTENNAS AND NECESSARY MOUNTING BRACKETS/SUPPORT.]

5. For Class 5 (Temporary) Antenna Installations:

- a. A temporary Telecom Facility installation may require screening to reduce visual impacts depending on the duration of the permit and the setting of the proposed site. If screening methods are determined to be necessary by the review authority, the appropriate screening methods will be determined through the permitting process reflecting the temporary nature of the Telecom Facility.

6. Support Equipment. All Support Equipment associated with the operation of any Telecom Facility shall be placed or mounted in the least visually obtrusive location ~~possible~~Feasible, and shall be screened from view.

- a. Installations on Private Property. The following is a non-exclusive list of potential screening techniques for Telecom Facilities located on private property:

- (1) Building-Mounted Facilities. For building or structure-mounted Antenna installations, Support Equipment for the Telecom Facility may be located inside the building, in an underground vault, or on the roof of the building that the Telecom Facility is located on, provided that both the equipment and any screening materials are architecturally compatible and/or painted the color of the building, roof, and/or surroundings thereby providing screening. If placed in an underground vault, flush-to-grade vents, or vents that extend no more than 24 inches above the finished grade and are screened from public view may be incorporated.

- (2) Roof-Mounted Facilities. All screening materials for roof-mounted Telecom Facilities shall be of a quality and design compatible with the architecture, color, texture and materials of the building to which it is mounted. If determined necessary by the review authority, screening to avoid adverse impacts to views from land or buildings at higher elevations shall be required.

- (3) Freestanding Facilities. For freestanding Telecom Facilities installations, not mounted on a building or structure, Support Equipment for the Telecom Facility may be visually screened by locating the Support Equipment in a fully enclosed building, in an underground vault, or in a security enclosure consisting of walls

and/or landscaping to effectively screen the Support Equipment at the time of installation.

- (4) All wall and landscaping materials shall be selected so that the resulting screening will be visually integrated with the architecture and landscape architecture of the surroundings.
 - (5) Screening enclosures may utilize graffiti-resistant and climb-resistant vinyl-clad chain link with a “closed-mesh” design (i.e. one-inch gaps) or may consist of an alternate enclosure design approved by the review authority. In general, the screening enclosure shall be made of non-reflective material and painted to blend with surrounding materials and colors.
 - (6) If placed in an underground vault, flush-to-grade vents, or alternatively, vents that extend no more than 24 inches above the finished grade and are screened from public view may be utilized.
- b. Installations in a Public Right-of-Way. The following is a non-exclusive list of potential screening techniques for Telecom Facilities located in a public right-of-way:
- (1) Where the existing utilities services (e.g., telephone, power, cable TV) are located underground, the Support Equipment shall be placed underground, consistent with Chapter 13.20. Flush-to-grade underground vault enclosures, including flush-to-grade vents, or vents that extend no more than 24 inches above the finished grade and are screened from public view may be incorporated. Electrical meters required for the purpose of providing power for the proposed Telecom Facility may be installed above ground on a pedestal in a public right-of-way.
 - (2) Support equipment approved to be located above ground in a public right-of-way shall be painted or otherwise coated to be visually compatible with the existing or replacement pole, lighting and/or traffic signal equipment without substantially increasing the width of the structure.
 - (3) All transmission or amplification equipment such as remote radio units, tower mounted amplifiers and surge suppressors shall be mounted inside the streetlight pole or traffic control standard without increasing the pole diameter or shall be installed in a flush-to-grade vault enclosure adjacent to the base of the pole.
- G. Night Lighting.** Telecom Facilities shall not be lighted except for security lighting at the lowest intensity necessary for that purpose or as may be recommended by the U.S. Flag Code. Such lighting shall be shielded so that direct illumination does not directly shine on nearby properties. The review authority shall consult with the Police Department regarding proposed security lighting for Telecom Facilities on a case-by-case basis.

- H. Signs and Advertising.** No advertising signage or identifying logos shall be displayed on any Telecom Facility except for small identification, address, warning, and similar information plates. Such information plates shall be identified in the telecom application and shall be subject to approval by the review authority. Signage required by state or federal regulations shall be allowed in ~~its smallest permissible size~~ accordance with the foregoing.
- I. Nonconformities.** A proposed Telecom Facility shall not create any new or increased nonconformity as defined in the Zoning Code, such as, but not limited to, a reduction in and/or elimination of, required parking, landscaping, or loading zones unless relief is sought pursuant to applicable Zoning Code procedures.
- J. Maintenance.** The Telecom Operator shall be responsible for maintenance of the Telecom Facility in a manner consistent with the original approval of the Telecom Facility, including but not limited to the following:
1. Any missing, discolored, or damaged screening shall be restored to its original permitted condition.
 2. All graffiti on any components of the Telecom Facility shall be removed promptly in accordance the Newport Beach Municipal Code.
 3. All landscaping required for the Telecom Facility shall be maintained in a healthy condition at all times, and shall be promptly replaced if dead or dying.
 4. All Telecom Facilities shall be kept clean and free of litter.
 5. All equipment cabinets shall display a legible contact number for reporting maintenance problems to the Telecom Facility Operator.
 6. If a flagpole is used for a Telecom Facility, flags shall be flown and shall be properly maintained at all times. The use of the United States flag shall comply with the provisions of the U.S. Flag Code (4 U.S.C. § 1 *et seq.*).

20.49.070 – Permit Review Procedures.

- A. Application Procedures.** Applications for Telecom Facilities shall be subject to Chapters 20.50, 20.52, and 20.54 unless otherwise modified by this Section.
- B. Permit Required.** All Telecom Facilities shall obtain a MUP, CUP, LTP, or ZC if not prohibited by subsection 20.49.050.B, depending on the Antenna Class and location, as specified in the Table 4-1:

Table 4-1

Permit Requirements for Telecom Facilities

Location of Proposed Telecom Facility	Antenna Class and Permit Requirement				
	Class 1 (a)	Class 2 (a) (b)	Class 3 (a) (b)	Class 4 (a) (b)	Class 5 (a)
Telecom Facility located in any Zoning District, Planned Community, or Specific Plan within 150 feet of any Residential District or their equivalent residential land use designation within a Planned Community District or Specific Plan.	ZC	MUP	MUP	MUP	LTP
Telecom Facility not located in the area identified in Subsection 1 but located in or within 150 feet of Open Space Districts (OS), Public Facilities Districts (PF), Parks and Recreation Districts (PR), or their equivalent land use designations within a Planned Community District or Specific Plan.	ZC	MUP	MUP	CUP	LTP
Telecom Facility not located in the other areas identified	ZC	CUP	MUP	CUP	LTP

(a) Any application for a Telecom Facility that proposes to exceed the base height limit of the applicable zoning district in which the Telecom Facility is located shall require review and action of a CUP by the Planning Commission.

(b) DAS installed on an existing streetlight pole, existing utility pole or other existing structure may be allowed subject to issuance of a Zoning Clearance (ZC) when the Director determines the **Telecom** Facility complies with the screening requirements.

C. Application Submission Requirements for Telecom Facilities on City-owned or City-held Trust Properties. Prior to the submittal for any application for any Telecom Facility located on any City-owned property or City-held trust property, the applicant shall first obtain written authorization from the City Manager or its designee to submit an application.

D. Fee. All costs associated with the permit application review shall be the responsibility of the applicant, including any expense incurred for any outside technical or legal services in connection with the application.

E. Review Process. Review of applications for all Telecom Facilities in City shall be consistent with Chapter 20.50 (Permit Application Filing and Processing), and the FCC Declaratory Ruling FCC 09-99 ("Shot Clock") deadlines.

F. Review of Collocated **Telecom Facilities.** Notwithstanding any provision of this Chapter to the contrary, pursuant to California Government Code section 65850.6 (as amended or

superseded), the addition of a new Telecom Facility to an existing Telecom Facility resulting in the establishment of a Collocated Telecom Facility shall be allowed without a discretionary review provided it meets section 20.49.100. If such a Collocated Telecom Facility does not satisfy all of the requirements of Government Code section 65850.6 and Section 20.49.100, the Telecom Facility shall be reviewed pursuant the review procedures provided in Table 4-1.

- G. Emergency Communications Review.** At the time an application is submitted to the Community Development Department, a copy of the Plans, Map, and Emission Standards shall be sent to the Chief of the Newport Beach Police Department. The Police Department or its designee shall review the plan's potential conflict with emergency communications. The review may include a pre-installation test of the Telecom Facility to determine if any interference exists. If the Police Department determines that the proposal has a high probability that the Telecom Facility will interfere with emergency communications devices, the applicant shall work with the Police Department to avoid interference.
- H. Public Notice and Public Hearing Requirements.** An application for a MUP, CUP or LTP shall require a public notice, and a public hearing shall be conducted, in compliance with Chapter 20.62 (Public Hearings).
- I. Required Findings for Telecom Facilities.** The following findings shall apply to all Telecom Facilities requiring discretionary review:
1. General. The review authority may approve or conditionally approve an application for a Telecom Facility only after first finding each of the required findings for a MUP or CUP pursuant to Section 20.52.020 (Conditional Use Permits and Minor Use Permits), or an LTP pursuant to Section 20.52.040 (Limited Term Permits), and each of the following:
 - a. The proposed Telecom Facility is visually compatible with the surrounding neighborhood.
 - b. The proposed Telecom Facility complies with the technology, height, location and design standards, as provided for in this Chapter.
 - c. An alternative site(s) located further from a Residential District, Public Park or Public Facility cannot feasibly fulfill the coverage needs fulfilled by the installation at the proposed site.
 - d. An alternative Antenna construction plan that would result in a higher priority Antenna Class category for the proposed Telecom Facility is not available or reasonably Feasible and desirable under the circumstances.
 2. Findings to Increase Height. The review authority may approve, or conditionally approve an application for a Telecom Facility which includes a request to exceed the base height limit for the zoning district in which the Telecom Facility is located only after making

each of the following findings in addition to the required findings above, as well the required findings for a MUP or CUP pursuant to Section 20.52.020 (Conditional Use Permits and Minor Use Permits), or an LTP pursuant to Section 20.52.040 (Limited Term Permits):

- a. The increased height will not result in undesirable or abrupt scale changes or relationships being created between the proposed Telecom Facility and existing adjacent developments or public spaces.
- b. Establishment of the Telecom Facility at the requested height is necessary to provide service.

20.49.080 – Permit Implementation, Time Limits, Extensions, and Appeals.

- A. The process for implementation or “exercising” of permits issued for a Telecom Facility, time limits, and extensions, shall be in accordance with Chapter 20.54 (Permit Implementation, Time Limits, and Extensions).
- B. Appeals. Any appeal of the decision of the review authority of an application for a Telecom Facility shall be processed in compliance with Chapter 20.64 (Appeals).

20.49.090 – Agreement for Use of City-Owned or City-Held Trust Property.

When applying for a permit pursuant to this Chapter, all Telecom Facilities located on City-owned or City-held trust property shall require a license agreement approved as to form by the City Attorney, and as to substance (including, but not limited to, compensation, term, insurance requirements, bonding requirements, and hold harmless provisions) by the City Manager, consistent with provisions in the City Council Policy Manual.

Prior to entering into an agreement, the applicant shall obtain a MUP, CUP, LTP or ZC. Upon the issuance of a MUP, CUP, LTP or ZC, as required, and upon entering into an agreement, the applicant shall obtain any and all necessary ministerial permits, including, encroachment permits for work to be completed in the public right-of-way, and building permits, etc. All costs of said permits shall be at the sole and complete responsibility of the applicant. All work shall be performed in accordance with the applicable City standards and requirements.

20.49.100 – Modification of Existing Telecom Facilities.

Notwithstanding any provision in this Chapter of the Zoning Code, a request to modify an existing Telecom Facility that involves the Collocation of new transmission equipment, the removal of existing transmission equipment, or the replacement of existing transmission equipment shall be subject to a ministerial review and approval of a ZC without the processing of any discretionary permit provided that such modification does not substantially change the existing Telecom Facility from the original permit for the Telecom Facility. A substantial change means a single change, or series of changes over time that exceeds five percent (5%) of the physical dimension of the Telecom Facility approved as part of the original discretionary permit.

Each application submitted under this section for a modification to an existing Telecom Facility shall be accompanied by:

1. A detailed description of the proposed modifications to the existing Telecom Facility(ies);
2. A photograph or description of the Telecom Facility as originally constructed, if available; a current photograph of the existing Telecom Facility; and, a graphic depiction of the Telecom Facility after modification showing all relevant dimensions;
3. A detailed description of all construction that will be performed in connection with the proposed modification; and
4. A written statement signed and stamped by a professional engineer, licensed and qualified in California, attesting that the proposed modifications do not constitute a substantial change of the existing permitted ~~Telecom F~~facility.

Any permit issued will be conditioned, and may be revoked, and the Telecom Facility shall be required to be removed or restored to its pre-modification condition if:

- a. Any material statement made with respect to the Telecom Facility is false; or
- b. The modifications as actually made would have triggered a discretionary review.

20.49.110 – Operational and Radio Frequency Compliance and Emissions Report.

At all times, the wireless operator shall ensure that its Telecom Facilities shall comply with the most current regulatory, operations standards, and radio frequency emissions standards adopted by the FCC. The wireless operator shall be responsible for obtaining and maintaining the most current information from the FCC regarding allowable radio frequency emissions and all other applicable regulations and standards. Said information shall be made available by the wireless operator upon request at the discretion of the Community Development Director.

Within thirty (30) days after installation of a Telecom Facility, a radio frequency (RF) compliance and emissions report prepared by a qualified RF engineer acceptable to the City shall be submitted in order to demonstrate that the Telecom Facility is operating at the approved frequency and complies with FCC standards for radio frequency emissions safety as defined in 47 C.F.R. § 1.1307 *et seq.* Such report shall be based on actual field transmission measurements of the Telecom Facility operating at its maximum effective radiated power level, rather than on estimations or computer projections. If the report shows that the Telecom Facility does not comply with the FCC's 'General Population/Uncontrolled Exposure' standard as defined in 47 C.F.R. § 1.1310 Note 2 to Table 1, the Director shall require that use of the Telecom Facility be suspended until a new report has been submitted confirming such compliance.

Upon any proposed increase of at least ten percent (10%) in the effective radiated power or any proposed change in frequency use of the Telecom Facility by the ~~Telecom O~~wireless operator,

the Telecom-wireless Operator shall be required to provide an updated, certified radio frequency (RF) compliance and RF emissions safety report. [DIFFERENTIATE BETWEEN OPERATOR OF THE TELECOM FACILITY AND THE TELECOM OPERATOR (TELECOM FACILITY OWNER VS. TELECOM FACILITY TENANT/CARRIER).]

A qualified independent radio frequency engineer selected and under contract to the City, may be retained to review said certifications for compliance with FCC regulations. All costs associated with the City's review of these certifications shall be the responsibility of the permittee, which shall promptly reimburse City for the cost of the review.

20.49.120 – Right to Review or Revoke Permit.

The reservation of right to review any permit for a Telecom Facility granted by the City is in addition to, and not in lieu of, the right of the City to review and revoke or modify any permit granted or approved hereunder for any violations beyond a reasonable cure period of the conditions imposed on such permit.

20.49.130 – Removal of Telecom Facilities.

A. Discontinued Use. Any Telecom Operator who intends to abandon or discontinue use of a Telecom Facility must notify the Community Development Director by certified mail no less than thirty (30) days prior to such abandonment or discontinuance of use. The Telecom Operator or owner of the affected real property shall have ninety (90) days from the date of abandonment or discontinuance, or a reasonable additional time as may be approved by the Community Development Director, within which to complete one of the following actions, provided that no Telecom Operator is then using the Telecom Facility: [DIFFERENTIATE BETWEEN OPERATOR OF THE TELECOM FACILITY AND THE TELECOM OPERATOR (TELECOM FACILITY OWNER VS. TELECOM FACILITY TENANT/CARRIER).]

1. Reactivate use of the Telecom Facility.
2. Transfer the rights to use the Telecom Facility to another Telecom Operator and the Telecom Operator immediately commences use within a reasonable period of time as determined by the Community Development Director.
3. Remove the Telecom Facility and restore the site.

B. Abandonment. Any Telecom Facility that is not operated for transmission and/or reception for a continuous period of ninety (90) days or whose Telecom Operator did not remove the Telecom Facility in accordance with Subsection A shall be deemed abandoned. Upon a finding of abandonment, the City shall provide notice to the Telecom Operator last known to use such Telecom Facility and, if applicable, the owner of the affected real property, providing thirty days from the date of the notice within which to complete one of the following actions:

1. Reactivate use of the Telecom Facility.

2. Transfer the rights to use the Telecom Facility to another Telecom Operator who has agreed to reactivate the Telecom Facility within 30 days of the transfer.
3. Remove the Telecom Facility and restore the site.

C. Removal by City.

1. The City may remove an abandoned Telecom Facility on publicly owned property, repair any and all damage to the premises caused by such removal, and otherwise restore the premises as is appropriate to be in compliance with applicable codes at any time after thirty (30) days following the notice of abandonment.
2. If the City removes an abandoned Telecom Facility on publicly owned property, the City may, but shall not be required to, store the removed Telecom Facility or any part thereof. The owner of the premises upon which the abandoned Telecom Facility was located and all prior operators of the Telecom Facility shall be jointly liable for the entire cost of such removal, repair, restoration and storage, and shall remit payment to the City promptly after demand therefore is made. In addition, the City Council, at its option, may utilize any financial security required in conjunction with granting the telecom permit as reimbursement for such costs. Also, in lieu of storing the removed Telecom Facility, the City may convert it to the City's use, sell it, or dispose of it in any manner deemed by the City to be appropriate.

- D. City Lien on Property.** Until the cost of removal, repair, restoration, and storage is paid in full, a lien shall be placed on the abandoned personal property and any publicly owned real property on which the Telecom Facility was located for the full amount of the cost of removal, repair, restoration and storage. The City Clerk shall cause the lien to be recorded with the Orange County Recorder, with the costs of filing, processing, and release of such City Lien being added to the other costs listed in this subsection.



August 1, 2013

Mr. James Campbell
Principal Planner
Community Development Department
100 Civic Center Drive
Newport Beach, CA 92660

In Reference To: Revised Wireless Telecommunications Facilities Ordinance

Dear Mr. Campbell:

CalWA, the California Wireless Association appreciates receiving the City of Newport Beach revised Wireless Telecommunications Facilities Ordinance dated June 2013. We also received the e-mail notice that there will be another work session on your wireless ordinance before your Planning Commission on August 8th.

CalWA and PCIA, the Wireless Industry Association, submitted a letter and detailed comments in July 2012 on the draft of the City's Wireless Telecommunications Facilities (WTF) Ordinance. We are pleased that many of our comments and suggestions have been incorporated into the revised ordinance, and that the new draft now recognizes Section 6409 of the Middle Class Tax Relief and Jobs Creation Act of 2012 for the collocation, removal and replacement of equipment at existing wireless facilities. However, even with the recent modifications to the proposed WTF ordinance, further changes could better facilitate the responsible deployment of wireless infrastructure improvements needed to adequately serve the citizens of Newport Beach.

The PCIA/CalWA letter dated July 19, 2012 (attached) clearly sets forth the continuing need for improved wireless infrastructure. Wireless networks must adapt to dramatic capacity demands due to an 1,800 percent increase in traffic over the last four years and a projected growth of 18 times current levels of mobile data traffic over the next five years. Mobile internet users are projected to outnumber wireline users in two years. Without ongoing improvements to the City's wireless backbone infrastructure, dependable wireless services cannot be delivered to the citizens of Newport Beach.

The following provides CalWA's comments on the current June 2013 draft of Chapter 20.49 of City Staff's proposed Wireless Telecommunications Facilities Ordinance.



Section 20.49.010 - Purpose (Page 1)

This initial statement should acknowledge the important role wireless infrastructure, mobile communication and internet access now plays in Newport Beach related to the City's economy, job creation, productivity and public safety. It should also acknowledge that wireless infrastructure is a "utility" as defined by California's Constitution, and should be permitted under a similar rubric as other utility infrastructure improvements.

Section 20.49.30 - Definitions, C. Antenna Classes (Pages 3 and 4)

The antenna classes in the latest draft have been revised to remove "Collocations", formerly a Class 2 Facility. This has been made in compliance with federal law, and will help facilitate anticipated 4th Generation/LTE upgrades at existing sites within the City. However, additional sites will be needed, especially in high traffic areas to avoid capacity issues associated with rapidly growing mobile internet data transmissions.

DAS systems and "Small Cells" located within public rights of way are needed to provide coverage and capacity in residential neighborhoods and in certain commercial areas. Small Cells are also needed in "hot spot" - high traffic areas, primarily for capacity reasons. CalWA suggests that smaller sites within public rights-of-way be allowed through an administrative Encroachment Permit and/or Zoning Clearance process if the project demonstrates compliance with the ordinances' design and screening standards.

Section 20.49.050 - Location Preferences, B. Prohibited Locations (Page 6)

The City should consider allowing wireless infrastructure in all zones in the City. The majority of Newport Beach residents now use their wireless smart phones, tablets and lap tops as their primary communication and internet access devices. They want these devices to work in their homes as well as where they work, and while they are traveling. We all want them to work everywhere, especially in an emergency situation. However, CalWA understands that residents don't want wireless facilities that result in adverse aesthetic impacts that affect views. CalWA suggests that wireless infrastructure, like wireline telephone, electricity and natural gas utility infrastructure be allowed in residential zones through a Minor Use Permit or Conditional Use Permit process if the project demonstrates compliance with the ordinances' design and screening standards.

Subsection 4 under Prohibited Locations indicates that telecom facilities are prohibited on streetlights. However, other sections of this draft WTF ordinance encourages the use of streetlights as a preferred location within the public rights-of-way. CalWA suggests that Subsection 4 be removed from Section 20.49-050.



Section 20.49.060 - General Development and Design Standards

A. General Criteria (Page 7)

CalWA supports the City in its efforts to minimize visual impacts of providing wireless infrastructure, and the use of reasonable aesthetic criteria to be used in evaluating wireless applications. However, CalWA would like City Staff, the Planning Commission and City Council to keep in mind the important "utility" role that wireless infrastructure plays in Newport Beach. No other utility infrastructure must adhere to the standards and criteria set forth in this ordinance. We respectfully request the City begin to look at wireless improvements in the same manner as other utility providers.

D. Setbacks (Page 8), and Section 20.49.070 - Permit Review Procedures, Subsection B. Permit Required, Table 4 -1 - Permit Requirements for Telecom Facilities (Page 14)

Setbacks required in Section 20.49.070 - Permit Review Procedures, Subsection B. Permit Required, Table 4-1 - Permit Requirements for Telecom Facilities sets forth a setback of 150 feet from Residential, Open Space, Public Facilities and Parks and Recreation Districts as a criteria under which different classes of ministerial and discretionary permits are required. The suggested 150 foot criterion is arbitrary, and a lower setback of 50 or 100 feet should be considered. CalWA also suggest that there be no setback requirements for Class 3 sites located in public rights-of-way adjacent to residential, open space, public facilities and open space zoned properties. Under state law, the City's management of access to the public streets is required to be exercised in an equivalent manner as to all entities. Subjecting wireless facilities to setbacks that do not apply to other utility infrastructure utilizing vertical elements is unreasonable and raises questions as to whether such regulations are in fact based over perceived health concerns over radio frequency exposure in violation of federal law.

CalWA also suggests that Class 3 public right-of-way sites not located within the setback area of any of these land use zones should be allowed under a Zoning Clearance, and not a Minor Use Permit.

Section 20.49.060 - General Development and Design Standards

F. Screening Standards, 6. Support Equipment (Pages 11 and 12)

Undergrounding support equipment on private property and within public rights-of-way is a significant issue for wireless providers, especially in Newport Beach because of very high groundwater levels along the coast and in other more elevated areas of the City. Major rainstorms and isolated thunderstorms in the past have resulted in significant damage to support equipment, especially where flush-to-grade vents are required. This



has resulted in wireless carrier losses of millions of dollars over the years and the loss of coverage and capacity in local networks during major rainstorms, which adversely affects public safety during emergency situations. The City's wireless ordinance needs to provide reasonable flexibility for above grade support equipment, similar to what is required for other utility providers, and for the City's traffic signal equipment, which are critical for safety during major rainstorms.

Section 20.49.060 - General Development and Design Standards

G. Emergency Communications Review (Page 15)

The last decade has shown that wireless infrastructure does not interfere with emergency communication facilities. This includes the City of Newport Beach Police and Fire Departments, and the Orange County Fire Authority. Decade old interference issues created by Nextel's previous 800 megahertz operations have been resolved, so this type of review is no longer necessary. City Staff has the ability to forward any wireless permit application to your Police and Fire Department staff for review and comment. It should not be a requirement of a wireless facility applicant to submit a "pre-application test" of new or modified wireless infrastructure to determine if there might be potential interference. CalWA suggests that Section G is no longer necessary and should be removed. Such a pre-application test also violates federal law, as the FCC exercises exclusive jurisdiction over interference issues.

Section 20.49.060 - General Development and Design Standards

I. Required Findings for Telecom Facilities (Page 15)

These criteria are subjective and do not consider the technical requirements of the wireless providers to meet the growing demand for coverage and capacity needs of Newport Beach's citizens. More emphasis should be placed on the important roll wireless broadband access plays in the City.

Section 20.49.110 - Operational and Radio Frequency Compliance and Emissions Report (Pages 17 and 18)

CalWA has worked with jurisdictions and wireless providers throughout the state, and has never come across a situation where Radio Frequency (RF) emissions exceed federally adopted FCC standards. It is our experience that when testing has been required, actual emissions are a small fraction of FCC standard allowable limits. Over the last decade, RF emission power levels have actually dropped because of network infrastructure expansion. In addition, for many sites, the antennas meet what are referred to in the FCC's regulations as "categorically excluded." See Section 1.1307(b)(1) of the FCC's rules. CalWA suggests that the Radio Frequency Compliance



and Emission Report required by Section 20.49.110 is no longer warranted, at the very least with respect to categorically excluded facilities, and should be removed.

Conclusion

Reliable wireless communication is no longer a luxury. Wireless facilities provide the basic infrastructure for telecommunication/broadband accessibility that allows the citizens of Newport Beach high-speed Internet access. The City currently has a unique opportunity to facilitate expanded and improved wireless services to its residents, businesses and visitors by amending its WTF Ordinance in consideration of CalWA's suggested revisions.

CalWA will participate in the upcoming ordinance revision process, and will have a representative at the August 8th Planning Commission workshop to answer any questions City Staff or the Planning Commission may have. We appreciate your consideration and support to further our mutual goal of implementing and deploying responsible and timely wireless infrastructure to serve the City of Newport Beach.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'W. Dean Brown'.

W. Dean Brown, Regulatory Committee
California Wireless Association (CalWA)
c/o The Planning Consortium
23181 Verdugo Drive, Suite 100B
Laguna Hills, CA. 92653
(714) 328-6313

CC: Sean Scully Co-Chair, Regulatory Committee, CalWA
Julian Quattlebaum, Co-Chair, Regulatory Committee, CalWA
Alex Reynolds, PCIA



Sprint
330 Commerce
Irvine, CA 92602

August 5, 2013

Mr. James Campbell
Principal Planner
Community Development Department
100 Civic Center Drive
Newport Beach, CA 92660

RECEIVED BY
COMMUNITY

AUG 14 2013

DEVELOPMENT
CITY OF NEWPORT BEACH

In Reference To: Revised Wireless Telecommunications Facilities Ordinance

Dear Mr. Campbell:

Sprint has reviewed the City of Newport Beach revised Wireless Telecommunications Facilities Ordinance dated June 2013. CalWA, the California Wireless Association has forwarded us their response to you dated July 26th. While Sprint broadly concurs with CalWA's review, we would like to add the following comments:

- In the last sentence of paragraph N., Section 20.49.30 Definitions of C. Antenna Classes, it is stated that false trees are no longer considered a "stealth facility". We would challenge this definition; false trees are indeed a stealth design. Tree designs have improved greatly over recent years and with the addition of "antenna socks", more branches, and multi-trunk trees etc., false trees can be well integrated into an area's existing vegetation and should be classified as a "stealth facility".
- In paragraph D of Section 20.49.050 Location Preferences, Sprint could not agree with the recommendation that a new telecom facility proposed within 1,000 feet of an existing telecom facility be required to collocate on the same building or structure as the existing telecom facility. While it would be our goal to look at whether collocation was feasible, in many cases it is not. This can be due to space constraints if the facility is on a rooftop, lack of height available on an existing monopole or similar structure, structural incapability of a free standing structure to support another wireless carrier etc. It is therefore too restrictive to require collocation in all cases.



- In the paragraph dealing with height in 20.49.060 – General Development and Design Standards, it states that antennas shall be installed at a minimum height possible to provide “average service”. Sprint would challenge the definition of “average service”, our goal is to provide substantially better than average service to our customers and we would not want to limit coverage from any of our telecom facilities to such a low level.
- In the screening standard paragraphs for support equipment in the same section, specifically paragraph 6a does not appear to support the use of ground mounted support equipment for telecom facilities mounted to rooftops or within buildings. Sprint would like to see the inclusion of ground mounted facilities for sites at these locations.

We would be grateful if the City would take into account Sprint’s comments at its review meeting on August 8th.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "K. Crompton".

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City of Newport Beach, Community Development Department
Mr. Jim Campbell, Principal Planner
100 Civic Center Drive
Newport Beach, CA 92660

August 21, 2013

RE: Newport Beach Telecom Ordinance Update

Mr. Campbell,

On behalf of Verizon Wireless, I would like to thank you for yet another opportunity to provide comments to City Staff, concerning the proposed update to the City's Wireless Communications Facilities Ordinance. The last Stakeholder's meeting, held on July 25, 2012, proved to be useful and constructive. We are pleased to see that Staff took the time to seriously consider and integrate some of the concerns communicated by the various industry representatives and other concerned/interested parties, into the current version of the draft ordinance. In anticipation of the upcoming September 5th Planning Commission Study Session (rescheduled from August 8th), the following discussion areas and comments are respectfully submitted for your consideration:

20.49.030. Definitions

C. Antenna Classes

4. (Pg. 4) Please provide more clarity on what defines a Class 4 Freestanding Structure. Providing examples of facilities would be helpful. Do Class 4 structures include stealth and non-stealth facilities? Also, the definition states that it is a structure constructed for the "sole or primary purpose of supporting the Telecom Facility." For example, consider a flagpole or similar facility on a property. If the flagpole was to be removed and replaced with a stealth version, a dual purpose is now served. The existing structure was replaced with a facility of similar aesthetics and function. Since it was previously a flagpole that was slightly altered to structurally support telecom equipment, would it now be considered a wireless facility as its primary purpose, rather than a dual function? Would staff interpret this as a Class 4 or 1? What characteristics provide the distinction? Verizon believes that in such a scenario, the facility should not be defined as one whose primary purpose is a wireless communications facility.

D. Base Station (Pg. 4): The definition for Base Station does not seem to match that provided by the FCC. If a Base Station does not include the antennas, the antenna supporting structure, or the support

equipment, then what specifically does it include by the definition in the draft ordinance? Does it only refer to the equipment cabinets? Are equipment cabinets not supporting equipment? This definition should be revised. On January 25, 2013, the Federal Communications Commission Wireless Telecommunications Bureau, offered guidance on the interpretation of Section 6409 (A) the Middle Class Tax Relief and Job Creation Act (TRA). The FCC defined base station as:

(D) Base Station

A "base station" consists of "radio transceivers, antennas, coaxial cable, a regular and backup power supply, and other associated electronics." Section 6409(a) applies to the collocation, removal, or replacement of equipment on a wireless tower or base station. In this context, the FCC believes it is reasonable to interpret a "base station" to include a structure that currently supports or houses an antenna, transceiver, or other associated equipment that constitutes part of a base station.

There should also be some language or additional detail in the ordinance update in regards to the various types of "Eligible Facilities Requests" under the 2012 TRA legislation. This may be considered to be included in section 20.49.100. The TRA provides for an administrative process for (a) collocation of new transmission equipment, removal of transmission equipment, and replacement of transmission equipment (under specified criteria). Verizon has used a checklist/worksheet to help determine whether a facility/project fits the required criteria to be an "eligible facility", and would be happy to provide it to City Staff as a reference tool if they so please.

Section 20.49.050- Location Preferences

D. Collocation Installations (Pg. 7) The requirement that a new telecom facility proposed within 1,000 feet of an existing Telecom Facility shall be required to collocate on the same building or structure as the Existing Telecom Facility can be problematic. While Subsection 1 discusses that compelling evidence can allow for exceptions to this rule, what types of evidence would this include? One scenario would be lack of room to locate equipment and another would be lack of space for antennas. Often even though there is an existing facility within 1,000 feet, that facility it is not within the required coverage area for the radio frequency objectives. Lastly, what if the existing facility is legal nonconforming and any proposal would be more than a five percent (5%) change, as listed in Section 20.49.100?

2. How can the City impose a condition of approval on a property owner, to provide for future collocation of telecom facilities? While the condition can be general in saying that the property owner will make the best efforts to cooperate with the City to provide for future collocation, many property owners may be hesitant to authorize a condition on a future project.

Section 20.49.060- General Development and Design Standards

C. Height (Pg. 8)

1. There is some concern with limiting the height of building/roof mounted structures to the base height limit for the zoning district due to the fact that most buildings are already constructed to this maximum height limit. If the proposed building to locate on is at the maximum base height limit, there is no additional height for the carrier to locate their antennas on top of the building, which is the preferred location in Section 20.49.050. While the code proposes to allow additional height through a heightened review process, it is recommended that the proposed code be revised to state that any building/roof mounted stealth antennas are allowed 15 feet above the maximum base height limit. This will then alleviate the Planning Commission from having to review multiple proposals due to there being no additional height available on the existing building.

4a. Additionally, there is some concern with limiting the height on existing streetlight standards, utility poles, utility towers or similar structures. These facility types can all have varying height, which can potentially make them infeasible if the addition of the antennas exceeds the 35' height limit. Instead, we recommend not limiting the actual height, but limiting how high above these structures the antennas can go.

4c. Lastly, with regard to height, limiting ground-mounted flagpoles to a maximum height of 35' may actually limit the ability to provide the necessary coverage for the antennas. Shorter flagpoles often do not allow for a full tapered and natural flagpole look. We have found that taller flagpoles allow for more of a tapered appearance and provide a more aesthetically pleasing design.

C. Setbacks (Pg. 8) While complying with the required setbacks for the specified zoning district is feasible for most installations, there are instances when certain wireless facility designs, such as flagpoles, a monument sign or a clock tower would logically, aesthetically, and functionally make more sense to be located within a front or side yard setback. Has the City considered if in certain instances this could potentially be allowed? Granted, other concerns and protective measures, such as facility placement and equipment placement will be considered and integrated into the design of these facilities, in order to account for line of sight/corner cut-off requirements, so that a vehicle operator's visibility of traffic is not obscured. Is there any mechanism for relief in these types of situations?

F. Screening Standards (Pg. 11) We commend the City for giving applicants some flexibility with the design and placement of supporting equipment, as carriers often run into several constraints (i.e. construction, zoning,) when designing sites. Often if there are too many limitations and specifications on the design of the wireless facilities in the Code, many of the "would be" optimal candidates (for the City and carriers) are then rendered infeasible.

4c. This may actually be the case with the proposed code in regards to flagpole installations, given that the proposed ordinance limits the diameter of the pole to 24" at the base and 20" at the top. This combined with the minimum 35' height limit in Section 20.49.060.4.c will limit a carrier's ability to utilize this design as the current technology will likely not fit within these parameters.

6. This section regarding support equipment and the requirement/recommendation of underground vaulting, especially flush mounted vents, is problematic and concerning for many carriers. Telecommunications equipment housed in any self-contained, underground vault generates heat, which can damage or destroy the equipment. Additionally, moisture, either from evaporation or flooding from rain, can severely damage or destroy the equipment. Flush mounted vents further enhance the chances of equipment damage. While damage is a concern, the primary concern is that when the equipment is damaged it can cause a site to go off air, which will have a drastic impact on the overall coverage in the City of Newport Beach.

6.a.1. This section mentions several options regarding equipment locations for building-mounted facilities; such as within the building, in a vault or on the roof, but it does not mention allowing equipment to be located at grade within a screened equipment enclosure. We recommend adding this as an additional option.

Consider encouraging/providing flexibility in standards for emergency backup generators

The Ordinance is currently silent on its stance and interpretation on emergency backup generators. The City should even consider placing emergency backup generators in their own category, as opposed to the umbrella of "supporting equipment", given the increasing importance of having permanent generators at all wireless facility sites. The City should consider adding a section/verbiage regarding emergency back-up diesel generators, and encourage the flexibility to use all types (diesel, propane, alternative fuel). Standby generators and batteries serve a vital role to wireless carriers' networks, especially in power outages, emergencies and natural disasters. In the event power outages, a wireless carrier's equipment will first transition over to the back-up batteries. The batteries can run the site for a few hours depending upon the demand placed on the equipment. Should the power outage extend beyond the capacity of the batteries, the backup generator will automatically start and continue to run the site. While many public safety agencies employ their own two-way radio systems for intra-agency communications, the various wireless carriers' networks are often the link to other agencies, organizations, and the outside world. Backup batteries and generators allow wireless communications facility sites to continue providing valuable communications services in the event of a power outage, natural disaster, or other emergency.

Additionally, in light of limited space on a number of properties in beach communities, as a note, the City should consider variances or some relief in parking, setbacks, etc. for the location of generators.



Table 4-1 (Pg. 14)

It would be user friendly to define LUP, MUP, LTP, CUP, and ZC as footnotes in the table, for ease of reference. Additionally it would also be convenient to add a footnote or column that specifies the final determining body for each antenna class/proposed location, for ease of reference, reinforcement, and clarity.

Again, Verizon Wireless would like to thank the City for keeping the wireless carriers, and other interested parties, apprised of the developments and progression of this proposed ordinance amendment, while allowing us the opportunity to provide our comments. We look forward to working with the City towards the successful completion of developing a sound ordinance; one that strikes an equitable balance between the wireless industry's need to meet the increasing coverage and capacity demands of their customers and networks, while protecting the residents, businesses and land uses of the City of Newport Beach.

Best Regards,

A handwritten signature in blue ink, appearing to read "Sonal Thakur", is written over a light blue horizontal line.

Sonal Thakur

Authorized Representative of Verizon Wireless

Comments of Larry Tucker

Jim, I have set forth in track changes mode the edits and questions I have. I have not looked at Telecom Companies comments but will do so before the meeting tonight. My goal for tonight's meeting is to walk through each page of the Ordinance, hearing from staff and then the stakeholders, perhaps even one issue at a time. I want to get into the specifics of the language so that, hopefully, the Commission can give guidance on the issues and staff can have a cleaned up version back for review, hopefully in a couple of weeks. But that may not be possible depending on the amount of redrafting that will be required. For now, please distribute to the Commission and the stakeholders, and make available to the public, as soon as you can and we will see what happens tonight. Thanks. Larry.

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Chapter 20.49 – Wireless Telecommunications Facilities

Sections

20.49.010 – Purpose

20.49.020 – Effect of Chapter

General Provisions

20.49.030 – Definitions

20.49.040 – Available Technology

20.49.050 – Location Preferences

20.49.060 – General Development and Design Standards

20.49.070 – Permit Review Procedures

20.49.080 – Permit Implementation, Time Limits, Duration, and Appeals

20.49.090 – Agreement for Use of City-owned or City-held Trust Property

20.49.100 – Modification of Existing Telecom Facilities

20.49.110 – Operational and Radio Frequency Compliance and Emissions Report

20.49.120 – Right to Review or Revoke Permit

20.49.130 – Removal of Telecom Facilities

20.49.010 – Purpose

- A. The purpose of this Chapter is to provide for the installation, modification, operation and maintenance of wireless telecommunication facilities (“Telecom Facilities”) on public and private property consistent with state and federal law while ensuring public safety, reducing the visual effects of ~~Telecom Facilities~~ equipment on public streetscapes, protecting scenic, ocean and coastal public views, and otherwise mitigating the impacts of ~~Telecom Facilities~~ such as ~~Facilities~~. More specifically, the regulations contained herein are intended to encourage: 1) ~~encourage~~ the location of ~~Telecom Facilities~~ Antennas in non-residential areas, 2) ~~encourage~~ Collocation at new and existing Antenna sites, and 3) ~~encourage~~ Telecom Facilities to be located in areas where adverse visual impacts on the community and public views are minimized.

- B. The provisions of this Chapter are not intended and shall not be interpreted to prohibit or to have the effect of prohibiting telecom services. This Chapter shall be applied to providers, operators, and maintainers of wireless services regardless of whether authorized by state or federal regulations. This Chapter shall not be applied in such a manner as to unreasonably discriminate among providers of functionally equivalent telecom services.
- C. All Telecom Facilities approved under this Chapter shall utilize the most efficient and least obtrusive available technology in order to minimize the number of Telecom Facilities in the City and reduce their visual impact on the community and public views.

20.49.020 – Effect of Chapter

- A. **Regulatory Scope.** These regulations are applicable to all Telecom Facilities providing voice and/or data transmission such as, but not limited to, cell phone, internet and radio relay stations.
- B. **Permit and/or Agreement Required.** Prior to construction or modification of any Telecom Facility in the City, the applicant shall obtain a Minor Use Permit (MUP), Conditional Use Permit (CUP), Limited Term Permit (LTP), or Zoning Clearance (ZC), depending on the proposed location, Antenna Class, and method of installation, in accordance with Section 20.49.070 (Permit Review Procedures). Applicants who obtain a MUP, CUP, LTP, or ZC (and an encroachment permit, if required) for any Telecom Facility approved to be located on any City-owned property or City-held Trust property, shall enter into an agreement prepared and executed by the City Manager or its designee prior to construction of the Telecom Facility, consistent with Section 20.49.090 (Agreement for Use of City-owned or City-held Trust Property).
- C. **Exempt Facilities.** The following types of facilities are exempt from the provisions of this Chapter:
 - 1. Amateur radio antennas and receiving satellite dish antennas, and citizen band radio antennas regulated by Section 20.48.190 (Satellite Antennas and Amateur Radio Facilities).
 - 2. Dish and other antennas subject to the FCC Over-the-Air Reception Devices (“OTARD”) rule, 47 C.F.R. § 1.4000 that are designed and used to receive video programming signals from (a) direct broadcast satellite services, or (b) television broadcast stations, or (c) for wireless cable service.
 - 3. During an emergency, as defined by Title 2 of the NBMC, the City Manager, Director of Emergency Services or Assistant Director of Emergency Services shall have the authority to approve the placement of a Telecom Facility in any district on a temporary basis not exceeding ninety (90) calendar days from the date of authorization. Such authorization may be extended by the City on a showing of good cause.

4. Facilities exempt from some or all of the provisions of this Chapter by operation of state or federal law to the extent so determined by the City.
5. Systems installed or operated at the direction of the City or its contractor.
6. Systems installed entirely within buildings for the sole purpose of providing wireless telecommunications services or data transmission services to building occupants.

D. Other Regulations. Notwithstanding the provisions of this Chapter, all Telecom Facilities within the City shall comply with the following requirements:

1. Rules, regulations, policies, or conditions in any permit, license, or agreement issued by a local, state or federal agency which has jurisdiction over the Telecom Facility.
2. Rules, regulations and standards of the Federal Communications Commission (FCC) and the California Public Utilities Commission (CPUC).

E. Regulations not in Conflict or Preempted. All Telecom Facilities within the City shall comply with the following requirements unless in conflict with or preempted by the provisions of this Chapter:

1. All applicable City design guidelines and standards.
2. Requirements established by any other provision of the Municipal Code and by any other ordinance and regulation of the City.

F. Legal Nonconforming Facility. Any Telecom Facility that is lawfully constructed, erected, or approved prior to the effective date of this Chapter that is operating in compliance with all applicable laws, and which Facility does not conform to the requirements of this Chapter shall be accepted and allowed as a legal nonconforming Facility if otherwise approved and constructed. Legal nonconforming Telecom Facilities shall comply at all times with the laws, ordinances, and regulations in effect at the time the application was deemed complete, and any applicable federal and state laws as they may be amended or enacted, and shall at all times comply with any conditions of approval.

20.49.030 – Definitions.

For the purposes of this Chapter, the following definitions shall apply:

- A. Antenna.** Antenna means a device used to transmit and/or receive radio or electromagnetic waves between earth and/or satellite-based systems, such as reflecting discs, panels, microwave dishes, whip antennas, Antennas, arrays, or other similar devices.
- B. Antenna Array.** Antenna Array means Antennas having transmission and/or reception elements extending in more than one direction, and directional Antennas mounted upon

and rotated through a vertical mast or tower interconnecting the beam and Antenna support, all of which elements are deemed to be part of the Antenna.

C. Antenna Classes. Antenna Classes are Telecom Facilities and the attendant Support Equipment separated into the following distinct classes:

1. Class 1 (Stealth/Screened): a Facility with Antennas mounted on an existing or proposed non-residential building or other structure not primarily intended to be an antenna support structure where Antennas and Support Equipment, including the base station, are fully screened so that they are not visible to the general public.
2. Class 2 (Visible): a Facility with Antennas mounted on an existing non-residential building, structure, pole, light standard, Utility Tower, Wireless Tower and/or Lattice Tower.
3. Class 3 (Public Right-of-Way Installations): a Facility with Antennas installed on a structure located in the public right-of-way.
4. Class 4 (Freestanding Structure): a Facility with Antennas mounted on a new freestanding structure constructed for the sole or primary purpose of supporting the Telecom Facility.
5. Class 5 (Temporary): a Facility including associated Support Equipment that is installed at a site on a temporary basis pursuant to a Limited Term Permit. A Class 5 installation may also be installed in connection with a special event upon the approval of a Special Events Permit pursuant to Chapter 11.03 without a Limited Term Permit.

D. Base Station. Base Station means the electronic equipment at a Telecom Facility installed and operated by the Telecom Operator that together perform the initial signal transmission and signal control functions. Base Station does not include the Antennas and Antenna support structure, or the Support Equipment, nor does it include any portion of DAS.

E. City-owned or City-held Trust Property. City-owned or City-held Trust Property means all real property and improvements owned, operated or controlled by the City, other than the public right-of-way, within the City's jurisdiction, including but ~~is~~ not limited to City Hall, Police and Fire facilities, recreational facilities, parks, [beaches \(?\)](#), libraries, monuments, signs, streetlights and traffic control standards.

F. Collocation. Collocation means an arrangement whereby multiple Telecom Facilities are installed on the same building or structure.

G. Distributed Antenna System, DAS. Distributed Antenna System (DAS) means a network of one or more Antennas and fiber optic nodes typically mounted to streetlight poles, or utility structures, which provide access and signal transfer services to one or more third-party wireless service providers. DAS also includes the equipment location, sometimes called a

“hub” or “hotel” where the DAS network is interconnected with third-party wireless service providers to provide the signal transfer services.

- H. **FCC.** FCC means the Federal Communications Commission, the federal regulatory agency charged with regulating interstate and international communications by radio, television, wire, satellite, and cable.
- I. **Feasible or Feasibly.** Feasible or Feasibly means capable of being accomplished in a successful manner within a reasonable period of time, taking into account environmental, physical, legal and technological factors.
- J. **Lattice Tower.** Lattice Tower means a freestanding open framework structure used to support Antennas, typically with three or four support legs of open metal crossbeams or crossbars.
- K. **Monopole.** Monopole means a single free-standing pole or pole-based structure solely used to act as or support a Telecom Antenna or Antenna Arrays.
- L. **Operator or Telecom Operator.** Operator or Telecom Operator means any person, firm, corporation, company, or other entity that directly or indirectly owns, leases, runs, manages, or otherwise controls a Telecom Facility or facilities within the City.
- M. **Public Right-of-Way.** Public Right-of-Way or (“PROW”) means the improved or unimproved surface of any street, or similar public way of any nature, dedicated or improved for vehicular, bicycle, and/or pedestrian related use. PROW includes public streets, roads, lanes, alleys, sidewalks, medians, parkways and landscaped lots.
- N. **Stealth or Stealth Facility.** Stealth or Stealth Facility means a Telecom Facility in which the Antenna, and the Support Equipment, are completely hidden from view in a monument, cupola, pole-based structure, or other concealing structure which either mimics, or which also serves as, a natural or architectural feature. Concealing structures which are obviously not such a natural or architectural feature to the average observer do not qualify within this definition. A false tree is not a Stealth Facility.
- O. **Support Equipment.** Support Equipment means the physical, electrical and/or electronic equipment included within a Telecom Facility used to house, power, and/or contribute to the processing of signals from or to the Facility’s Antenna or Antennas, including but not limited to a base station, cabling, air conditioning units, equipment cabinets, pedestals, and electric service meters. Support Equipment does not include DAS, Antennas or the building or structure to which the Antennas or other equipment are attached.
- P. **Telecommunication(s) Facility, Telecom Facility, Telecom Facilities, Wireless Telecommunications Facility, or Facility.** [Why not just pick one of these words and stick with it?] Telecommunication(s) Facility, Telecom Facility, Telecom Facilities, Wireless Telecommunications Facility, or simply Facility or Facilities means an installation that sends

and/or receives wireless radio frequency signals or electromagnetic waves, including but not limited to directional, omni-directional and parabolic antennas, structures or towers to support receiving and/or transmitting devices, supporting equipment and structures, and the land or structure on which they are all situated. The term does not include mobile transmitting devices, such as vehicle or hand held radios/telephones and their associated transmitting antennas.

- Q. Utility Pole.** Utility Pole means a single freestanding pole used to support services provided by a public or private utility provider.
- R. Utility Tower.** Utility Tower shall mean an open framework structure (see lattice tower) or steel pole used to support electric transmission facilities.
- S. Wireless Tower.** Wireless Tower means any structure built for the sole or primary purpose of supporting Antennas used to provide wireless services authorized by the FCC. A Distributed Antenna System (DAS) installed pursuant to a Certificate of Public Convenience and Necessity (CPCN) issued by the California Public Utilities Commission on a water tower, utility tower, street light, or other structures built or rebuilt or replaced primarily for a purpose other than supporting wireless services authorized by the FCC, including any structure installed pursuant to California Public Utility Code Section 7901, is not a Wireless Tower for purposes of this definition. For an example only, a prior-existing light standard which is replaced with a new light standard to permit the addition of Antennas shall not be considered a Wireless Tower, but rather a replacement light standard.

20.49.050 – Location Preferences.

- A. Preferred Locations.** To limit the adverse visual effects of and proliferation of new or individual Telecom Facilities in the City, the following list establishes the order of preference for the location and installation of Telecom Facilities, from highest priority location and technique to lowest.
1. Collocation of a new facility at an existing facility.
 2. Class 1.
 3. Class 2.
 4. Class 3.
 5. Class 4.
 6. Class 5.
- B. Prohibited Locations.** Telecom Facilities are prohibited in the following locations:

1. On properties zoned for single-unit or two-unit residential development, including equivalent PC District designation.
2. On properties zoned for multi-unit residential development and mixed-use development where the maximum allowable number of dwelling units is four (4) units.

3. In the Open Space (OS) zoning district, unless Telecom Facilities are collocated on an existing Utility Tower within a utility easement area, or collocated on an existing Telecom Facility.

3.4. [Comment: Isn't it possible that there could be an appropriate place for a Telecom Facility in one of these zones, although not many places?]

4.5. On streetlights. [Comment: There is some language about streetlights elsewhere in this Ordinance that causes me to wonder if streetlights should be a prohibited location.]

C. Installations in the Public Right-of-Way. All Telecom Facilities proposed to be located in the public right-of way shall comply with the provisions of Title 13. Antenna installations on an existing or replacement streetlight [Comment: I thought streetlights were a prohibited location.] pole shall be compatible in design, scale, and proportion to streetlights and the pole on which they are mounted.

D. Collocation Installations. A new Telecom Facility proposed within one thousand (1,000) feet of an existing Telecom Facility shall be required to collocate on the same building or structure as the existing Telecom Facility.

1. Exception: If the reviewing authority determines, based on a preponderance of compelling evidence submitted by the applicant, that Collocation of one or more new Telecom Facilities within one thousand (1,000) feet of an existing Telecom Facility is not Feasible, then such Collocation shall not be required.

2. Condition Requiring Future Collocation. In approving a Telecom Facility, the review authority may impose a condition of approval providing for future Collocation of Telecom Facilities by other carriers at the same site to the extent Feasible.

20.49.060 – General Development and Design Standards.

A. General Criteria. All Telecom Facilities shall employ design techniques to minimize visual impacts and provide appropriate screening to result in the least visually intrusive means of providing the service. Such techniques shall be employed to make the installation, appearance and operations of the Telecom Facility as visually inconspicuous as practicablepossible [Comment: Much is possible, but not always practicable]. To the greatest extent Feasible, Telecom Facilities shall be designed to minimize the visual impact of the Telecom Facility by means of location, placement, height, screening, landscaping, and

shall be compatible with existing architectural elements, building materials, other building characteristics, and the surrounding area.

In addition to the other design standards of this Section, the following criteria shall be considered by the review authority in connection with its processing of any MUP, CUP, LTP, or ZC for a Telecom Facility:

1. Blending. The extent to which the proposed Telecom Facility blends into the surrounding environment or is architecturally compatible and integrated into the structure.
2. Screening. The extent to which the proposed Telecom Facility is concealed or screened by existing or proposed new topography, vegetation, buildings or other structures.
3. Size. The total size of the proposed Telecom Facility, particularly in relation to surrounding and supporting structures.
4. Location. Proposed Telecom Facilities shall be located so as to utilize existing natural or man-made features in the vicinity of the Telecom Facility, including topography, vegetation, buildings, or other structures to provide the greatest amount of visual screening and blending with the predominant visual backdrop.

4.5. Collocation. In evaluating whether the Collocation of a Telecom Facility is Feasible, the criteria listed in 1-4 above shall be used to evaluate the visual effect of the combined number of Telecom Facilities at the proposed location.

B. Public View Protection. Telecom Facilities involving a site adjacent to an identified public view point or corridor, as identified in General Plan Policy NR 20.3 (Public Views), shall be reviewed to evaluate the potential impact to public views consistent with Section 20.30.100 (Public View Protection). [Comment: NR 20.3 allows for other public views to be identified in the future. Therefore, shouldn't the review process also be able to evaluate an impact to a public view that is not then listed in NR20.3?]

C. Height.

1. Telecom Facilities installed on buildings or other structures shall comply with the base height limit established in Part 2 (Zoning Districts, Allowable Uses, and Zoning District Standards) for the zoning district in which the Telecom Facility is located. [Comment: The staff report indicates that a new facility would be able to exceed the base height by 5'. Maybe I misunderstood the staff report, so please explain.]
2. Applications for the installation of Telecom Facilities proposed to be greater than the base height limit for the zoning district in which the Telecom Facility is located shall be subject to review and action by the Planning Commission. The Planning Commission may approve or conditionally approve a CUP for a Telecom Facility to exceed the base

height limit after making all of the required findings in Section 20.49.070.H (Permit Review Procedures).

3. All Telecom Facilities shall comply with Antenna height restrictions, if any, required by the Federal Aviation Administration, and shall comply with Section 20.30.060.E. (Airport Environs Land Use Plan ~~(AELUP)~~ for John Wayne Airport and Airport Land Use Commission ~~(ALUC)~~ Review Requirements) as may be in force at the time the Telecom Facility is permitted or modified.
4. Antennas shall be installed at the minimum height possible to provide average [Comment: Not sure what average is, but don't we want effective service?] service to the Telecom Operator's proposed service area. In any case, no Antenna or other telecom equipment or screening structure shall extend higher than the following maximum height limits:
 - a. Telecom Facilities installed on streetlight standards, Utility Poles, Utility Towers or other similar structures within the public right-of-way shall not exceed 35 feet in height above the finished grade.
 - b. Telecom Facilities may be installed on existing Utility Poles or Utility Towers that exceed 35 feet above the finished grade where the purposes of the existing Utility Pole or Utility Tower is to carry electricity or provide other wireless data transmission provided that the top of the Antenna does not extend above the top of the Utility Pole or Utility Tower.
 - c. Telecom Facilities installed in ground-mounted flagpoles may be installed at a maximum height of 35 feet.

D. Setbacks. Proposed Telecom Facilities shall comply with the required setback established by the development standards for the zoning district in which the Telecom Facility is proposed to be located. Setbacks shall be measured from the part of the Telecom Facility closest to the applicable lot line or structure.

E. Design Techniques. Design techniques shall result in the installation of a Telecom Facility that is in scale with the surrounding area, ~~screenshides~~ [Comment: The Ordinance has been using the word "screen" so I would recommend we stick with one word to describe the objective rather than introduce the word "hide" which could then be argued to mean something other than screen.] the installation from predominant views from surrounding properties, and prevents the Telecom Facility from visually dominating the surrounding area. Design techniques may include the following:

1. Screening elements to disguise, or otherwise hide the Telecom Facility from view from surrounding uses.

2. Painting and/or coloring the Telecom Facility to blend into the predominant visual backdrop.
3. Siting the Telecom Facility to utilize existing features (buildings, topography, vegetation, etc.) to screen or hide the Telecom Facility.
4. Utilizing simulated natural features (trees, rocks, etc.) to screen or hide the Telecom Facility.
5. Providing Telecom Facilities of a size that, as determined by the City, is not visually obtrusive such that any effort to screen the Telecom Facility would not create greater visual impacts than the Telecom Facility itself.

F. Screening Standards. For Collocation installations, the screening method shall be materially similar to those used on the existing Telecom Facility, and shall not diminish the screening of the Telecom Facility. If determined necessary by the review authority, use of other improved and appropriate screening methods may be required to screen the Antennas and Support Equipment from public view. The Following is a non-exclusive list of potential design and screening techniques that should be considered:

1. For Class 1 (Stealth/Screened) Antenna Installations:
 - a. All Telecom Facility components, including all Antenna panels and Support Equipment, shall be fully screened, and mounted either inside the building or structure, or behind the proposed screening elements and not on the exterior face of the building or structure.
 - b. Screening materials shall match in color, size, proportion, style, and quality with the exterior design and architectural character of the structure and the surrounding visual environment. If determined necessary by the reviewing authority, screening to avoid adverse impacts to views from land or buildings at higher elevations shall be required.
 - c. In conditions where the Antennas and Support Equipment are installed within a new freestanding structure, (an architectural feature such as a steeple, religious symbol or tower, cupola, clock tower, sign, etc.), the installation shall blend in the predominant visual backdrop so it appears to be a decorative and attractive architectural feature.
2. For Class 2 (Visible) Antenna Installations:
 - a. Building or structure mounted Antennas shall be painted or otherwise coated to match or complement the predominant color of the structure on which they are mounted and shall be compatible with the architectural texture and materials of the building to which the Antennas are mounted. No cables and mounting brackets or any other associated equipment or wires shall be visible from above, below or the

side of the Antennas. [\[Comment: If the facility is visible, will this actually be possible?\]](#)

- b. All Antenna components and Support Equipment shall be treated with exterior coatings of a color and texture to match the predominant visual background and/or adjacent architecture so as to visually blend in with the surrounding development. Subdued colors and non-reflective materials that blend with surrounding materials and colors shall be used.

3. For Class 3 (Public Right-of-Way) Antenna Installations:

- a. Whenever Feasible, new Antennas proposed to be installed in the public right-of-way shall be placed on existing or replacement utility structures, light standards, or other existing vertical structures. Antenna installations on existing or replacement streetlight poles [\[are these prohibited?\]](#), traffic control standards, or Utility Poles shall be screened by means of canisters, radomes, shrouds other screening measures whenever Feasible, and treated with exterior coatings of a color and texture to match the existing pole.
- b. If Antennas are proposed to be installed without screening, they shall be flush-mounted to the pole and shall be treated with exterior coatings of a color and texture to match the existing pole.
- c. If a new pole is proposed to replace an existing pole, the replacement pole shall be consistent with the size, shape, style and design of the existing pole, including any attached light arms.

4. For Class 4 (Freestanding Structure) Antenna Installations:

- a. For a false rock, the proposed screen structure shall match in scale and color other rock outcroppings in the general vicinity of the proposed site. A false rock screen may not be considered appropriate in areas that do not have natural rock outcroppings.
- b. The installation of a false tree (such as but without limitation a monopine or monopalm, or false shrubbery) shall be designed for and located in a setting that is compatible with the proposed screening method. Such installations shall be situated so as to utilize existing natural or manmade features including topography, vegetation, buildings, or other structures to provide the greatest amount of visual screening. For false trees or shrubbery installations, all Antennas and Antenna supports shall be contained within the canopy of the tree design, and other vegetation comparable to that replicated in the proposed screen structure shall be prevalent in the immediate vicinity of the antenna site, and the addition of new comparable living vegetation may be necessary to enhance the false tree or shrubbery screen structure.

- c. For installations of a flagpole, the pole shall not exceed 24 inches in width at the base of the flagpole and also shall not exceed 20 inches in width at the top of the flagpole.
5. For Class 5 (Temporary) Antenna Installations:
- a. A temporary Telecom Facility installation may require screening to reduce visual impacts depending on the duration of the permit and the setting of the proposed site. If screening methods are determined to be necessary by the review authority, the appropriate screening methods will be determined through the permitting process reflecting the temporary nature of the Telecom Facility.
6. Support Equipment. All Support Equipment associated with the operation of any Telecom Facility shall be placed or mounted in the least visually obtrusive location practicablepossible, and shall be screened from view.
- a. Installations on Private Property. The following is a non-exclusive list of potential screening techniques for Telecom Facilities located on private property:
 - (1) Building-Mounted Facilities. For building or structure-mounted Antenna installations, Support Equipment for the Telecom Facility may be located inside the building, in an underground vault, or on the roof of the building that the Telecom Facility is located on, provided that both the equipment and any screening materials are architecturally compatible and/or painted the color of the building, roof, and/or surroundings thereby providing screening. If placed in an underground vault, flush-to-grade vents, or vents that extend no more than 24 inches above the finished grade and are screened from public view may be incorporated.
 - (2) Roof-Mounted Facilities. All screening materials for roof-mounted Telecom Facilities shall be of a quality and design compatible with the architecture, color, texture and materials of the building to which it is mounted. If determined necessary by the review authority, screening to avoid adverse impacts to views from land or buildings at higher elevations shall be required.
 - (3) Freestanding Facilities. For freestanding Telecom Facilities installations, not mounted on a building or structure, Support Equipment for the Telecom Facility may be visually screened by locating the Support Equipment in a fully enclosed building, in an underground vault, or in a security enclosure consisting of walls and/or landscaping to effectively screen the Support Equipment at the time of installation.
 - (4) All wall and landscaping materials shall be selected so that the resulting screening will be visually integrated with the architecture and landscape architecture of the surroundings.

(5) Screening enclosures may utilize graffiti-resistant and climb-resistant vinyl-clad chain link with a “closed-mesh” design (i.e. one-inch gaps) or may consist of an alternate enclosure design approved by the review authority. In general, the screening enclosure shall be made of non-reflective material and painted to blend with surrounding materials and colors.

(6) If placed in an underground vault, flush-to-grade vents, or alternatively, vents that extend no more than 24 inches above the finished grade and are screened from public view may be utilized.

b. Installations in a Public Right-of-Way. The following is a non-exclusive list of potential screening techniques for Telecom Facilities located in a public right-of-way:

(1) Where the existing utilities services (e.g., telephone, power, cable TV) are located underground, the Support Equipment shall be placed underground, consistent with Chapter 13.20. Flush-to-grade underground vault enclosures, including flush-to-grade vents, or vents that extend no more than 24 inches above the finished grade and are screened from public view may be incorporated. Electrical meters required for the purpose of providing power for the proposed Telecom Facility may be installed above ground on a pedestal in a public right-of-way.

(2) Support equipment approved to be located above ground in a public right-of-way shall be painted or otherwise coated to be visually compatible with the existing or replacement pole, lighting and/or traffic signal equipment without substantially increasing the width of the structure.

(3) All transmission or amplification equipment such as remote radio units, tower mounted amplifiers and surge suppressors shall be mounted inside the streetlight pole or traffic control standard without increasing the pole diameter or shall be installed in a flush-to-grade vault enclosure adjacent to the base of the pole.

G. Night Lighting. Telecom Facilities shall not be lighted except for security lighting at the lowest intensity necessary for that purpose or as may be recommended by the U.S. Flag Code. Such lighting shall be shielded so that direct illumination does not directly shine on nearby properties. The review authority shall consult with the Police Department regarding proposed security lighting for Telecom Facilities on a case-by-case basis.

H. Signs and Advertising. No advertising signage or identifying logos shall be displayed on any Telecom Facility except for small identification, address, warning, and similar information plates. Such information plates shall be identified in the telecom application and shall be subject to approval by the review authority. Signage required by state or federal regulations shall be allowed in its smallest permissible size.

- I. Nonconformities.** A proposed Telecom Facility shall not create any new or increased nonconformity as defined in the Zoning Code, such as, but not limited to, a reduction in and/or elimination of, required parking, landscaping, or loading zones unless relief is sought pursuant to applicable Zoning Code procedures.
- J. Maintenance.** The Telecom Operator shall be responsible for maintenance of the Telecom Facility in a manner consistent with the original approval of the Telecom Facility, including but not limited to the following:
1. Any missing, discolored, or damaged screening shall be restored to its original permitted condition.
 2. All graffiti on any components of the Telecom Facility shall be removed promptly in accordance the Newport Beach Municipal Code.
 3. All landscaping required for the Telecom Facility shall be maintained in a healthy condition at all times, and shall be promptly replaced if dead or dying, or damaged [e.g. branches broken off in a storm or otherwise. Tree is still alive, but not what it once was.].
 4. All Telecom Facilities shall be kept clean and free of litter.
 5. All equipment cabinets shall display a legible contact number for reporting maintenance problems to the TelecomFacility Operator.
 6. If a flagpole is used for a Telecom Facility, flags shall be flown and shall be properly maintained at all times. The use of the United States flag shall comply with the provisions of the U.S. Flag Code (4 U.S.C. § 1 *et seq.*).

20.49.070 – Permit Review Procedures.

- A. Application Procedures.** Applications for Telecom Facilities shall be subject to Chapters 20.50, 20.52, and 20.54 unless otherwise modified by this Section.
- B. Permit Required.** All Telecom Facilities shall obtain a MUP, CUP, LTP, or ZC if not prohibited by subsection 20.49.050.B, depending on the Antenna Class and location, as specified in the Table 4-1:

Table 4-1

Permit Requirements for Telecom Facilities

Location of Proposed Telecom Facility	Antenna Class and Permit Requirement				
	Class 1 (a)	Class 2 (a) (b)	Class 3 (a) (b)	Class 4 (a) (b)	Class 5 (a)
Facility located in any Zoning District, Planned Community, or Specific Plan within 150 feet of any Residential District or their equivalent residential land use designation within a Planned Community District or Specific Plan.	ZC	MUP	MUP	MUP	LTP
Facility not located in the area identified in Subsection 1 [of what?] but located in or within 150 feet of Open Space Districts (OS), Public Facilities Districts (PF), Parks and Recreation Districts (PR), or their equivalent land use designations within a Planned Community District or Specific Plan.	ZC	MUP	MUP	CUP	LTP
Facility not located in the other areas identified	ZC	CUP	MUP	CUP	LTP

(a) Any application for a Telecom Facility that proposes to exceed the base height limit of the applicable zoning district in which the Telecom Facility is located shall [require the issuance](#)~~require review and action~~ of a CUP by the Planning Commission.

(b) DAS installed on an existing streetlight pole, existing utility pole or other existing structure may be allowed subject to issuance of a Zoning Clearance (ZC) when the Director determines the Facility complies with the screening requirements.

~~(b)~~(c) [\[Comment: I am sure I missed this, but where is it set forth who the review authority is for each of a MUP, CUP and LTP? The staff report indicated the Planning Commission would be the initial review authority only for the “most visible proposals”. How does this work?\]](#)

C. Application Submission Requirements for Telecom Facilities on City-owned or City-held Trust Properties. Prior to the submittal for any application for any Telecom Facility located on any City-owned property or City-held trust property, the applicant shall first obtain written authorization from the City Manager or its designee to submit an application.

D. Fee. All costs associated with the permit application review shall be the responsibility of the applicant, including any expense incurred for any outside technical or legal services in connection with the application.

- E. Review Process.** Review of applications for all Telecom Facilities in City shall be consistent with Chapter 20.50 (Permit Application Filing and Processing), and the FCC Declaratory Ruling FCC 09-99 (“Shot Clock”) deadlines.
- F. Review of Collocated Facilities.** Notwithstanding any provision of this Chapter to the contrary, pursuant to California Government Code section 65850.6 (as amended or superseded), the addition of a new Telecom Facility to an existing Telecom Facility resulting in the establishment of a Collocated Telecom Facility shall be allowed without a discretionary review provided it meets section 20.49.100. If such a Collocated Telecom Facility does not satisfy all of the requirements of Government Code section 65850.6 and Section 20.49.100, the facility shall be reviewed pursuant the review procedures provided in Table 4-1.
- G. Emergency Communications Review.** At the time an application is submitted to the Community Development Department, a copy of the Plans, Map, and Emission Standards shall be sent to the Chief of the Newport Beach Police Department. The Police Department or its designee shall review the plan’s potential conflict with emergency communications. The review may include a pre-installation test of the Telecom Facility to determine if any interference exists. If the Police Department determines that the proposal has a high probability that the Telecom Facility will interfere with emergency communications devices, the applicant shall work with the Police Department to avoid interference.
- H. Public Notice and Public Hearing Requirements.** An application for a MUP, CUP or LTP shall require a public notice, and a public hearing shall be conducted, in compliance with Chapter 20.62 (Public Hearings).
- I. Required Findings for Telecom Facilities.** The following findings shall apply to all Telecom Facilities requiring discretionary review:
1. General. The review authority may approve or conditionally approve an application for a Telecom Facility only after first finding each of the required findings for a MUP or CUP pursuant to Section 20.52.020 (Conditional Use Permits and Minor Use Permits), or an LTP pursuant to Section 20.52.040 (Limited Term Permits), and each of the following:
 - a. The proposed Telecom Facility is visually compatible with the surrounding neighborhood.
 - b. The proposed Telecom Facility complies with the technology, height, location and design standards, as provided for in this Chapter.
 - c. An alternative site(s) located further from a Residential District, Public Park or Public Facility cannot feasibly fulfill the coverage needs fulfilled by the installation at the proposed site.

- d. An alternative Antenna construction plan that would result in a higher priority Antenna Class category for the proposed Telecom Facility is not available or reasonably Feasible and desirable under the circumstances.
2. Findings to Increase Height. The review authority may approve, or conditionally approve an application for a Telecom Facility which includes a request to exceed the base height limit for the zoning district in which the Telecom Facility is located only after making each of the following findings in addition to the required findings above, as well the required findings for a MUP or CUP pursuant to Section 20.52.020 (Conditional Use Permits and Minor Use Permits), or an LTP pursuant to Section 20.52.040 (Limited Term Permits):
- a. The increased height will not result in undesirable or abrupt scale changes or relationships being created between the proposed Telecom Facility and existing adjacent developments or public spaces. [\[Comment: Is it possible to have an abrupt scale change that is not undesirable?\]](#)
 - b. Establishment of the Telecom Facility at the requested height is necessary to provide service.

20.49.080 – Permit Implementation, Time Limits, Extensions, and Appeals.

- A. The process for implementation or “exercising” of permits issued for a Telecom Facility, time limits, and extensions, shall be in accordance with Chapter 20.54 (Permit Implementation, Time Limits, and Extensions).
- B. Appeals. Any appeal of the decision of the review authority of an application for a Telecom Facility shall be processed in compliance with Chapter 20.64 (Appeals).

20.49.090 – Agreement for Use of City-Owned or City-Held Trust Property.

When applying for a permit pursuant to this Chapter, all Telecom Facilities located on City-owned or City-held trust property shall require a license agreement approved as to form by the City Attorney, and as to substance (including, but not limited to, compensation, term, insurance requirements, bonding requirements, and hold harmless provisions) by the City Manager, consistent with provisions in the City Council Policy Manual.

Prior to entering into an agreement, the applicant shall obtain a MUP, CUP, LTP or ZC. Upon the issuance of a MUP, CUP, LTP or ZC, as required, and upon entering into an agreement, the applicant shall obtain any and all necessary ministerial permits, including, encroachment permits for work to be completed in the public right-of-way, and building permits, etc. All costs of said permits shall be at the sole and complete responsibility of the applicant. All work shall be performed in accordance with the applicable City standards and requirements.

20.49.100 – Modification of Existing Telecom Facilities.

Notwithstanding any provision in this Chapter of the Zoning Code, a request to modify an existing Facility that involves the Collocation of new transmission equipment, the removal of existing transmission equipment, or the replacement of existing transmission equipment shall be subject to a ministerial review and approval of a ZC without ~~the~~ processing ~~of~~ any discretionary permit provided that such modification does not substantially change the existing Facility from the original permit for the Facility. A substantial change means a single change, or series of changes over time that exceeds five percent (5%) of the physical dimension of the Telecom Facility approved as part of the original discretionary permit.

Each application submitted under this section for a modification to an existing Telecom Facility shall be accompanied by:

1. A detailed description of the proposed modifications to the existing Telecom Facility(ies);
2. A photograph or description of the Telecom Facility as originally constructed, if available; a current photograph of the existing Telecom Facility; and, a graphic depiction of the Telecom Facility after modification showing all relevant dimensions;
3. A detailed description of all construction that will be performed in connection with the proposed modification; and
4. A written statement signed and stamped by a professional engineer, licensed and qualified in California, attesting that the proposed modifications do not constitute a substantial change of the existing permitted facility.

Any permit issued will be conditioned upon, and may be revoked, and the Telecom Facility shall be required to be removed or restored to its pre-modification condition if:

- a. Any material statement made with respect to the Telecom Facility is false; or
- b. The modifications as actually made would have ~~required~~triggered a discretionary review had the plan for the Telecom Facility depicted the modifications.

20.49.110 – Operational and Radio Frequency Compliance and Emissions Report.

At all times, the operator shall ensure that its Telecom Facilities shall comply with the most current regulatory, operations standards, and radio frequency emissions standards adopted by the FCC. The operator shall be responsible for obtaining and maintaining the most current information from the FCC regarding allowable radio frequency emissions and all other applicable regulations and standards. Said information shall be made available by the operator upon request at the discretion of the Community Development Director.

Within thirty (30) days after installation of a Telecom Facility, a radio frequency (RF) compliance and emissions report prepared by a qualified RF engineer acceptable to the City shall be submitted in order to demonstrate that the Telecom Facility is operating at the approved

frequency and complies with FCC standards for radio frequency emissions safety as defined in 47 C.F.R. § 1.1307 *et seq.* Such report shall be based on actual field transmission measurements of the Telecom Facility operating at its maximum effective radiated power level, rather than on estimations or computer projections. If the report shows that the Telecom Facility does not comply with the FCC's 'General Population/Uncontrolled Exposure' standard as defined in 47 C.F.R. § 1.1310 Note 2 to Table 1, the Director shall require that use of the Telecom Facility be suspended until a new report has been submitted confirming such compliance.

Upon any proposed increase of at least ten percent (10%) in the effective radiated power or any proposed change in frequency use of the Telecom Facility by the Telecom Operator, the Telecom Operator shall be required to provide an updated, certified radio frequency (RF) compliance and RF emissions safety report.

A qualified independent radio frequency engineer selected and under contract to the City, may be retained to review said certifications for compliance with FCC regulations. All costs associated with the City's review of these certifications shall be the responsibility of the permittee, which shall promptly reimburse City for the cost of the review.

20.49.120 – Right to Review or Revoke Permit.

The reservation of right to review any permit for a Telecom Facility granted by the City is in addition to, and not in lieu of, the right of the City to review and revoke or modify any permit granted or approved hereunder for any violations of the conditions imposed on such permit.

20.49.130 – Removal of Telecom Facilities.

A. Discontinued Use. Any Telecom Operator who intends to abandon or discontinue use of a Telecom Facility must notify the Community Development Director by certified mail no less than thirty (30) days prior to such abandonment or discontinuance of use. The Telecom Operator or owner of the affected real property shall have ninety (90) days from the date of abandonment or discontinuance, or a reasonable additional time as may be approved by the Community Development Director, within which to complete one of the following actions:

1. Reactivate use of the Telecom Facility.
2. Transfer the rights to use the Telecom Facility to another Telecom Operator and the Telecom Operator immediately commences use within a reasonable period of time as determined by the Community Development Director.
3. Remove the Telecom Facility and restore the site.

B. Abandonment. Any Telecom Facility that is not operated for transmission and/or reception for a continuous period of ninety (90) days or whose Telecom Operator did not remove the Telecom Facility in accordance with Subsection A shall be deemed abandoned. Upon a finding of abandonment, the City shall provide notice to the Telecom Operator last known

to use such Facility and, if applicable, the owner of the affected real property, providing thirty days from the date of the notice within which to complete one of the following actions:

1. Reactivate use of the Telecom Facility.
2. Transfer the rights to use the Telecom Facility to another Telecom Operator who has agreed to reactivate the Telecom Facility within 30 days of the transfer.
3. Remove the Telecom Facility and restore the site.

C. Removal by City.

1. The City may remove an abandoned Telecom Facility, repair any and all damage to the premises caused by such removal, and otherwise restore the premises as is appropriate to be in compliance with applicable codes at any time after thirty (30) days following the notice of abandonment.
2. If the City removes an abandoned Telecom Facility, the City may, but shall not be required to, store the removed Telecom Facility or any part thereof. The owner of the premises upon which the abandoned Telecom Facility was located and all prior operators of the Telecom Facility shall be jointly liable for the entire cost of such removal, repair, restoration and storage, and shall remit payment to the City promptly after demand therefore is made. In addition, the City Council, at its option, may utilize any financial security required in conjunction with granting the telecom permit as reimbursement for such costs. Also, in lieu of storing the removed Telecom Facility, the City may convert it to the City's use, sell it, or dispose of it in any manner deemed by the City to be appropriate.

D. City Lien on Property. Until the cost of removal, repair, restoration, and storage is paid in full, a lien shall be placed on the abandoned personal property and any real property on which the Telecom Facility was located for the full amount of the cost of removal, repair, restoration and storage. The City Clerk shall cause the lien to be recorded with the Orange County Recorder, with the costs of filing, processing, and release of such City Lien being added to the other costs listed in this subsection.

Wireless Telecommunications Facilities Ordinance Update

Code Amendment No. 2012-004

Evolution of the Mobile Phone



Planning Commission Study Session
September 19, 2013



Background



- **Existing Ordinance Adopted in 2002**
- **Change Happens**
 - **More devices, more data, changes in law & case law**
- **Comprehensive update**
 - **Update to reflect changes in law/case law**
 - **Intended to balance needs of community by:**
 - **Providing for increasing demand for wireless networks**
 - **Mitigating the impacts of future telecom facilities**

Background



- **Amendment initiated by City Council in March 2012**
- **Planning Commission Study Session 9/06/2012**
- **Commission requested:**
 - Increase use of administrative process
 - Simplify
 - Conduct outreach
- **Ordinance re-drafted in June 2013, comments received (attached to staff report)**

Highlights



- **Defined 5 Antenna Classes**
 1. Screened/Stealth
 2. Visible
 3. Public Right-of-way
 4. Freestanding Structure
 5. Temporary
- **Administrative process for Class 1**
- **Zoning Administrator for most Class 2 locations, Class 3, and Class 5**
- **Planning Commission for Class 2 is located near residential (or not) and Class 4**

Next Steps



- Ordinance remains a work-in-progress
- Staff plans additional revisions
- Additional stakeholder meeting (if desired)
- Public Hearing with Planning Commission
October 17, 2013 (tentative)

Discussion



- **Discussion of Draft**
- **Public Comments**
- **Questions?**



For more information contact:

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**CITY OF NEWPORT BEACH
COMMUNITY DEVELOPMENT DEPARTMENT
100 CIVIC CENTER DRIVE
NEWPORT BEACH, CA 92660
(949) 644- 3297**

Memorandum

To: Planning Commissioners
From: Brenda Wisneski, Deputy Community Development Director
Date: September 10, 2013
Re: Land Use Element Amendment (PA2013-098)

The Land Use Element Amendment Committee (Committee) will be finalizing the land use changes to be evaluated in the Environmental Impact Report at its October 1st meeting. Before doing so, the Committee seeks Planning Commission and City Council review and comment of the potential changes.

To date, the Committee has met on five occasions and a Public Information Meeting was held on September 9, 2013. Attached is an information pamphlet which includes background on the process and the land use changes which are currently proposed. A detailed presentation will be provided at the September 19, 2013 Planning Commission meeting.

Following the Planning Commission review, all comments will be forwarded to the City Council and Committee for consideration. The Planning Commission's comments will not be considered a formal action, but merely input provided during the process.

Attachments:

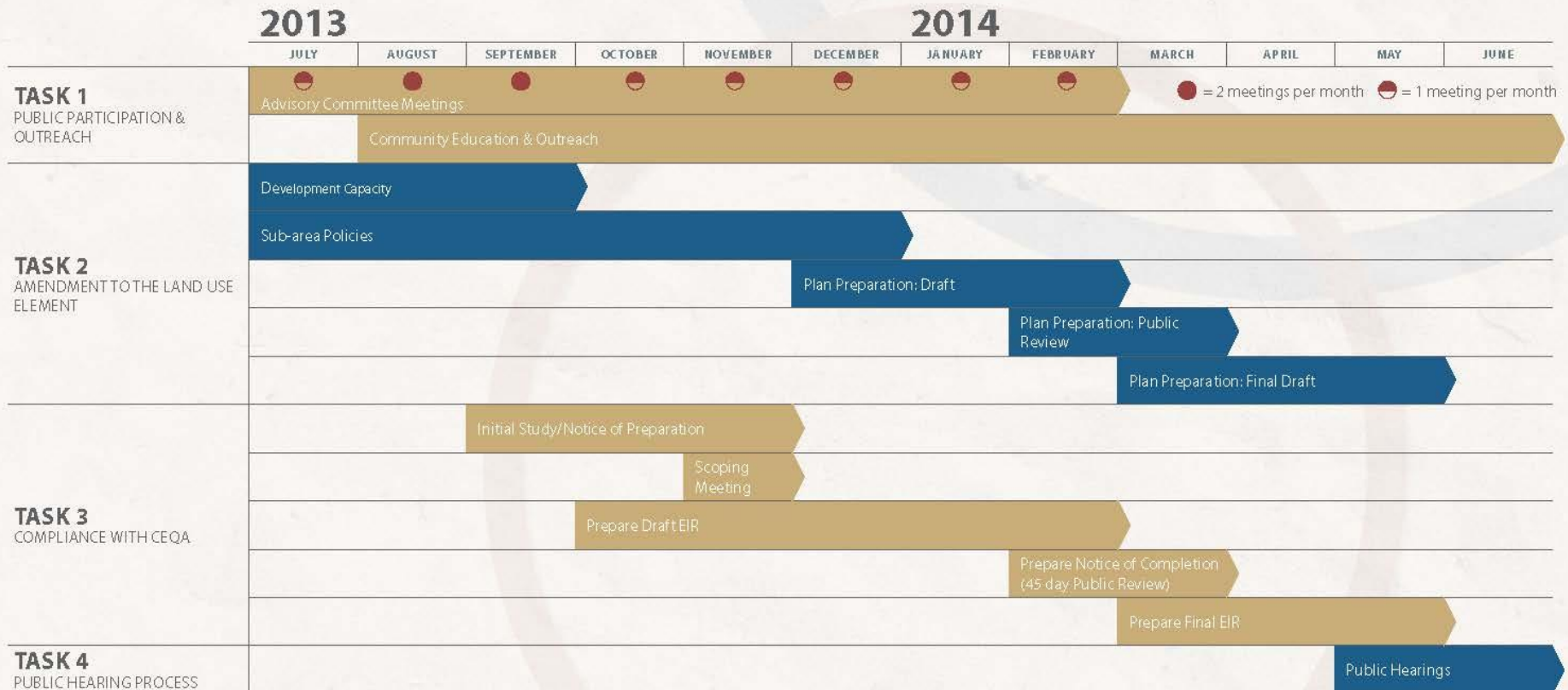
- Land Use Element Amendment Schedule
- Land Use Element Amendment Handout – Potential Land Use Changes



Work Program & Project Schedule

CITY OF NEWPORT BEACH

PROJECT TIMELINE



NEWPORT BEACH GENERAL PLAN

WHERE WE ARE HEADED

The forthcoming policy and land use recommendations will incorporate the community initiatives that have been conducted since the 2006 General Plan was adopted, including the Neighborhood Revitalization efforts including the Lido Village Design Guidelines, and the Balboa Village Implementation Plan as well as input from the Land Use Element Amendment Advisory Committee and the community at large.

Frequently Asked Questions:

1.- Why is the City conducting a Land Use Element Amendment now?

With the economy slowly recovering from the recession, now is a good time to re-evaluate the existing Land Use Element and modify any policies or land use designations to better address the goals and vision of the Newport Beach community in the context of the current economic climate.

2.- Who serves on the Land Use Element Amendment Advisory Committee?

The LUEAAC is made up of two members of the City Council, two members of the Planning Commission and five community members appointed to serve on the committee by the City Council.

3.- Could this amendment lead to other amendments?

The Land Use Amendment should adequately address the proposed land use and policy modifications to the plan; however other elements may be reviewed and updated as needed throughout the life of the current General Plan before a comprehensive General Plan update is conducted by the City.

4.- What will the Amendment process look like?

The amendment process will include the identification of any potential modifications to land uses and or development capacities based on recommendations from the LUEAAC. These recommendations will then be analyzed in accordance with the CEQA (California Environmental Quality Act). The LUEAAC will subsequently work with the community to update and modify existing Land Use policies, as necessary. Upon completion of the CEQA analysis the LUEAAC will make final recommendations for the amendments to the existing Land Use Element. These amendments will be reviewed by the Planning Commission and approved by the City Council. In accordance with the Greenlight Initiative the required amendments will appear on the ballot for a final vote of the public.

5.- Who will make the final decisions on what changes are made?

The Citizens of Newport Beach will make the final decision on what land use changes are made. The City Council will approve any modifications to the existing policies.

Land Use Element Amendment

WHERE WE HAVE BEEN

In 2002, Newport Beach knew that the City's General Plan, had not been updated since 1988 and was significantly out of date. A multi-year, community driven, update process was initiated by the City in partnership with the community and included more than 50 meetings where community input was solicited. Newport Beach residents and City leadership worked for four years – their efforts culminated in a General Plan that protects the quality of life in Newport Beach, embodies the values of the community and serves as a road map for elected officials and city staff to plan for the future. The 2006 General Plan was a huge success for Newport Beach. The 2006 General Plan was adopted by referendum in November 2006 in accordance with the Greenlight Initiative, which requires voter approval of the City's General Plan.



WHERE WE ARE TODAY

In 2013 the City kicked off a Land Use Element Amendment process in order to ensure that the goals set forth in the General Plan are being realized and to modify them as necessary – like an oil change rather than rebuilding the engine.

The amendment process is intended to account for and address any potential changes in economic conditions, community visions, and policy and regulatory initiatives since the plan’s adoption in 2006. With the Land Use Element Advisory Committee and the community’s input this fall a limited number of targeted and strategic changes will be recommended. These amendments will be vetted by the Planning Commission and, once approved, City Council and will then be placed on the ballot for final voter to approval.

Reduced Development Capacities

Location (#see map)	Existing Use	Existing Land Use Category	Recommended Amendment	Average Daily Trip Change*	Explanation/Justification
3 Westcliff Plaza 1000 - 1150 Irvine Avenue	Shopping Center	Neighborhood Commercial (CN) Allowed Floor Area: 138,500 sq ft. Existing Floor Area: 112,986 sq ft.	Reduction: 15,514 sq ft.	-593	To accurately reflect the existing improvements to the property.
6 Newport Coast Center 21101 - 21185 Newport Coast Drive	Shopping Center	Neighborhood Commercial (CN) Allowed Floor Area: 141,787 sq ft. Existing Floor Area: 103,712 sq ft.	Reduction: 37,875 sq ft.	-1,448	To accurately reflect the existing improvements to the property.
7 Newport Coast Hotel Rooms	None	Visitor Serving Commercial (CV) Allowed Rooms: 2150 Existing Rooms: 1128	Reduction: 1022 Rooms	-7,747	To accurately reflect the existing improvements to the property.
8 Bayside Center	Shopping Center	Neighborhood Commercial (CN) Allowed Floor Area: 66,000 sq ft. Existing Floor Area: 65,284 sq ft.	Reduction: 366 sq. ft.	-14	To accurately reflect the existing improvements to the property.
9 Harbor View Center	Shopping Center	Neighborhood Commercial (CN) Allowed Floor Area: 74,000 sq ft. Existing Floor Area: 71,993 sq ft.	Reduction: 1,857 sq. ft.	-71	To accurately reflect the existing improvements to the property.
10 The Bluffs	Shopping Center	General Commercial (CG) Allowed Floor Area: 54,000 sq ft. Existing Floor Area: 50,312 sq ft.	Reduction: 3,538 sq. ft.	-135	To accurately reflect the existing improvements to the property.
11 Gateway Park	Park	Corridor Commercial Allowed Floor Area: 4,356 sq ft. Existing Floor Area: 0	Parks and Recreation (PR)	-167	To accurately reflect the existing improvements to the property.

Areas Addressed With No Changes in Capacity

Location (#see map)	Existing Use	Existing Land Use Category	Recommended Amendment	Average Daily Trip Change*	Explanation/Justification
4 Airport Area	Various Uses	Total DU's allowed: 2,200 Additive: 500 Replacement:1,650	none	zero	Analysis determined that existing land uses were financially feasible. Additional policies may address specific village characteristics.
13 Lido Marina Village	Various Uses	CC, CM, CG, Pl, MU-W2, RM, PF	Consider Policy Changes	zero	Analysis determined that existing land uses were financially feasible. Additional policies may address specific village characteristics.
14 Mariners' Mile	Various Uses	CG, CM, MU-HI, MU-W1, PF	Consider economic feasibility of existing regulations.	zero	Analysis determined that existing land uses were financially feasible. Additional policies may address specific village characteristics.

Land Use Changes

Location (#see map)	Existing Use	Existing Land Use Category	Recommended Amendment	Average Daily Trip Change*	Explanation/Justification
1 1526 Placentia Ave	King's Liquor	RM18 DU/Acre (6 DU's)	CG 0.5 FAR (7,524 sq ft)	+251	To bring the existing use in conformance with the land use designation.
1 1499 Monrovia	Vacant office building – City Owned	Multiple-Unit Residential 18 DU/Acre (RM)	Public Facilities (PF) or RM 18 DU/Acre	+294	To bring the existing use in conformance with the land use designation.
2 813 E. Balboa Blvd.	Day Spa/ Legere Property	Two-Unit Residential (RT) 2- Units	Mixed Use-Vertical (MU-V) 2 units 1,917 sq ft commercial	+65	To bring the existing use in conformance with the land use designation.

Modified Capacity

Location (#see map)	Existing Use	Existing Land Use Category	Recommended Amendment	Average Daily Trip Change*	Explanation/Justification
Newport Center/ 5 Fashion Island	Regional shopping center and offices	Various	Regional Office: 500,000 sq ft. Regional Commercial (Fashion Island):50,000 sq ft. Multi-Family Dwellings (Apartments): 500	+9129	Consistent with 2006 General Plan recognizing Newport Center as an area appropriate for growth, limited new development will grow the tax base supporting city services and community priorities.
12 Harbor View	Private School	Private Institutional (.35) Allowed Floor Area: 99,708	Increase of 14,244 sq ft.	+94	To provide opportunity for the Harbor Day School to increase enrollment by 72 students if approved by an independent Conditional Use Permit process.





CHAPTER 3 **Land Use Element**



Land Use Element Amendment

Planning Commission
Briefing
September 19, 2013



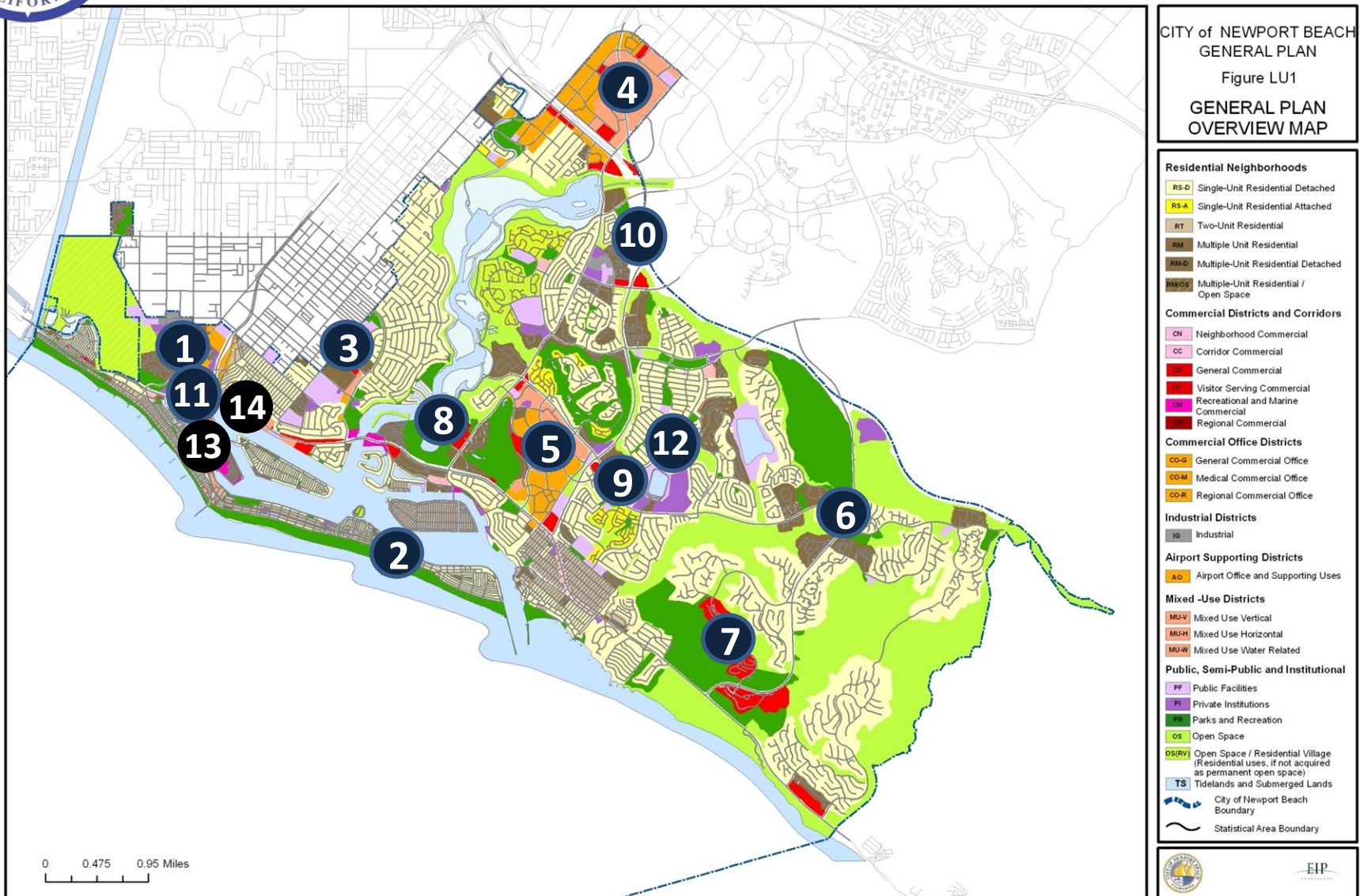


LUE Amendment Objectives

- Consider land use designation and density adjustments, in context of “**trip neutrality**”
- Policy revisions to reflect new City plans and policies
 - Balboa Village
 - Lido Village
- Policy revisions to reflect legislation, best practices, and City staff review

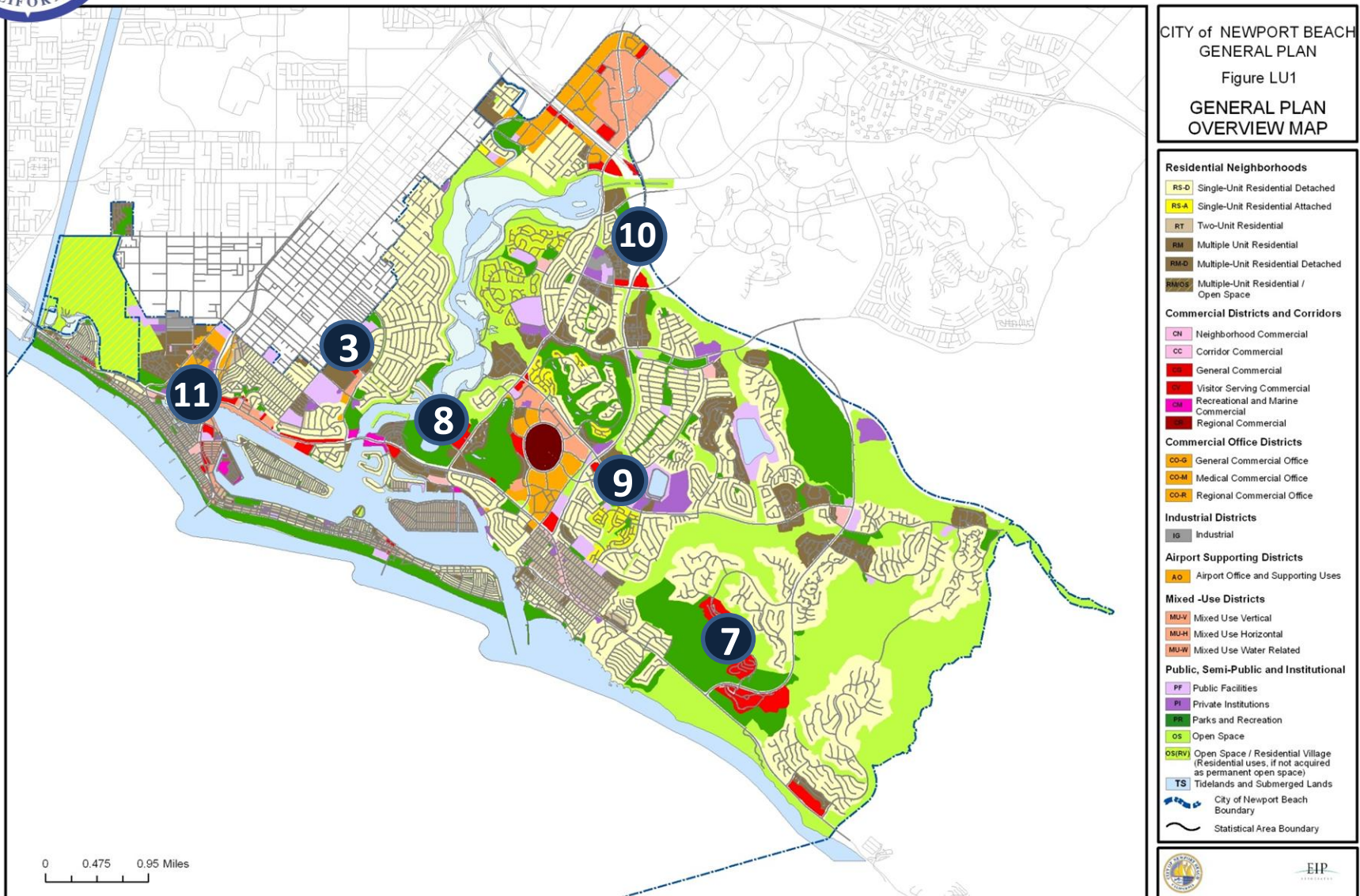


Study Areas





Reduced Capacity





Reduced Capacity





Reduced Capacity

Map Reference	Location	2006 General Plan		Existing	LUEAC Recommendation	
		Designation	Allowable SF		Reduction SF	Remaining SF
3	Westcliff Plaza	Neighborhood Commercial (CN)	138,500	112,986	14,514	11,000
6	Newport Coast Center	Neighborhood Commercial (CN)	141,787	103,712	37,825	200
7	Newport Coast Hotel	Visitor-Serving Commercial (CV)	2,150 (rooms)	1,128 (rooms)	1,022 (rooms)	0
8	Bayside Center	Neighborhood Commercial (CN)	66,000	65,284	366	350
9	Harbor View Center	Neighborhood Commercial (CN)	74,000	71,993	1,875	150
10	The Bluffs	General Commercial (CG)	54,000	50,312	3,538	150
11	Gateway Park	Commercial Corridor (CC)	4,356	0 (Park)	4,356	0



Land Use Changes





Land Use Changes

Map Refer-ence	Location	2006 General Plan		Existing	LUEAC Recommendation			
		Designation	Allowed Density		Designation	Density	Reduced SF	Remaining SF
1	1526 Placentia (King's Liquor)	Multi-Unit Residential (RM)	18 DU/Acre	7,424 SF	General Commercial (CG)	0.5 FAR	6 DUs	0
1	1499 Monrovia	Multi-Unit Residential (RM)	18 DU/Acre	Vacant office building	Public Facilities (PF),	NA	NA	NA
					or RM	18 DU/Acre		
2	813 East Balboa Boulevard	Two-Unit Residential (RT)	18 DU/Acre	Day Spa/Legere Property	Mixed-Use Vertical (MU-V)	1.5 FAR (0.7 non-res; 0.8 res)	NA	NA



Land Use Changes



1499 Monrovia

Supporting Facts:

Vacant office building
abutted by multi-family
residential

GP: Multiple Unit Residential (RM)
Allowed Density: 18 DU/Acre
Recommended Designation: Public
Facilities (PF) or RM 18 DU/Acre



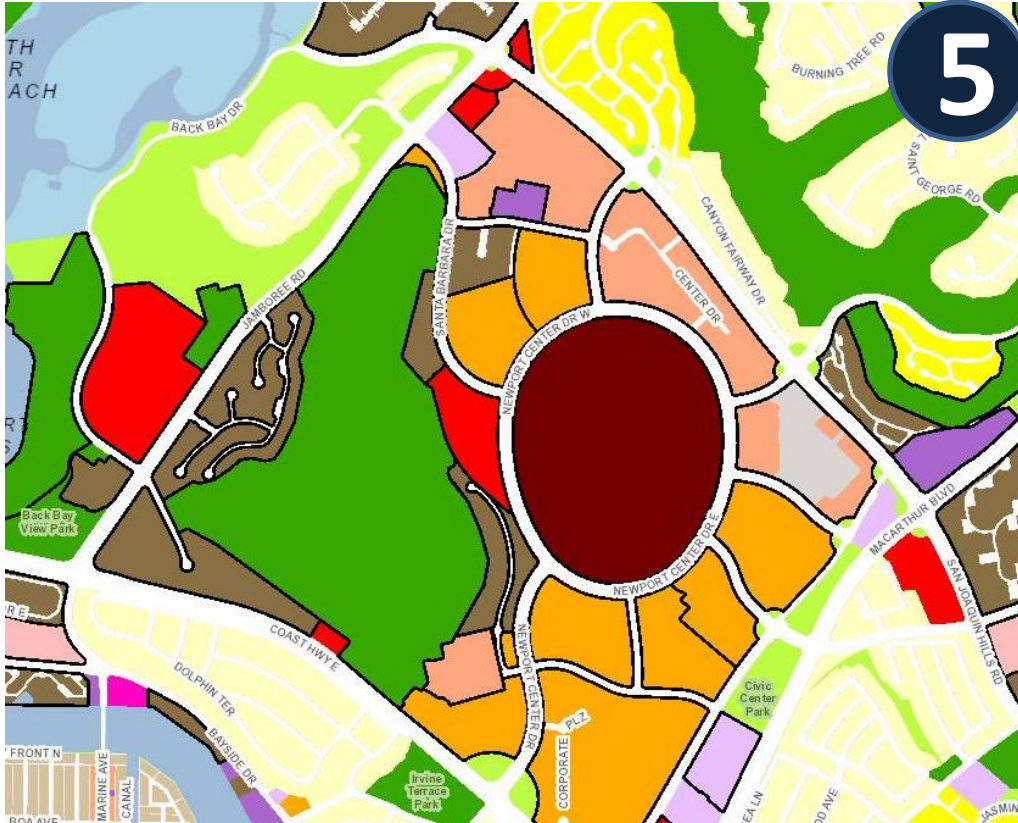


Modified Capacity





Modified Capacity



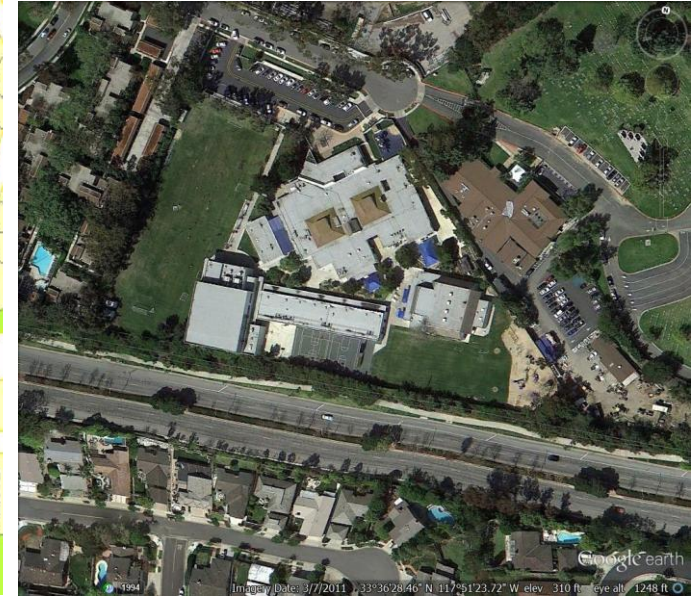
Newport Center/Fashion Island

Recommended Increases:

Regional Office: 500,000 SF

Regional Commercial: 50,000 SF

Multi-Family Dwellings: 500

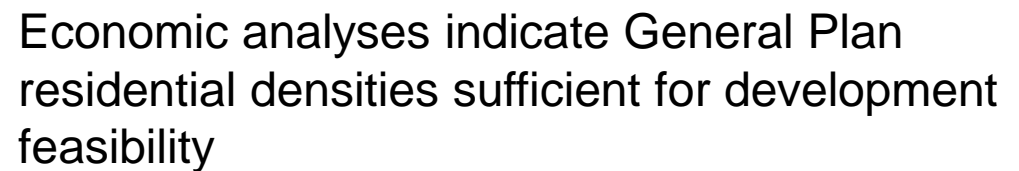


Supporting Facts:

GP Designation: Private Institutional (0.35 FAR)
 Allowed Floor Area: 99,708 SF
 Recommended Increase: 14, 244 SF (0.4 FAR)



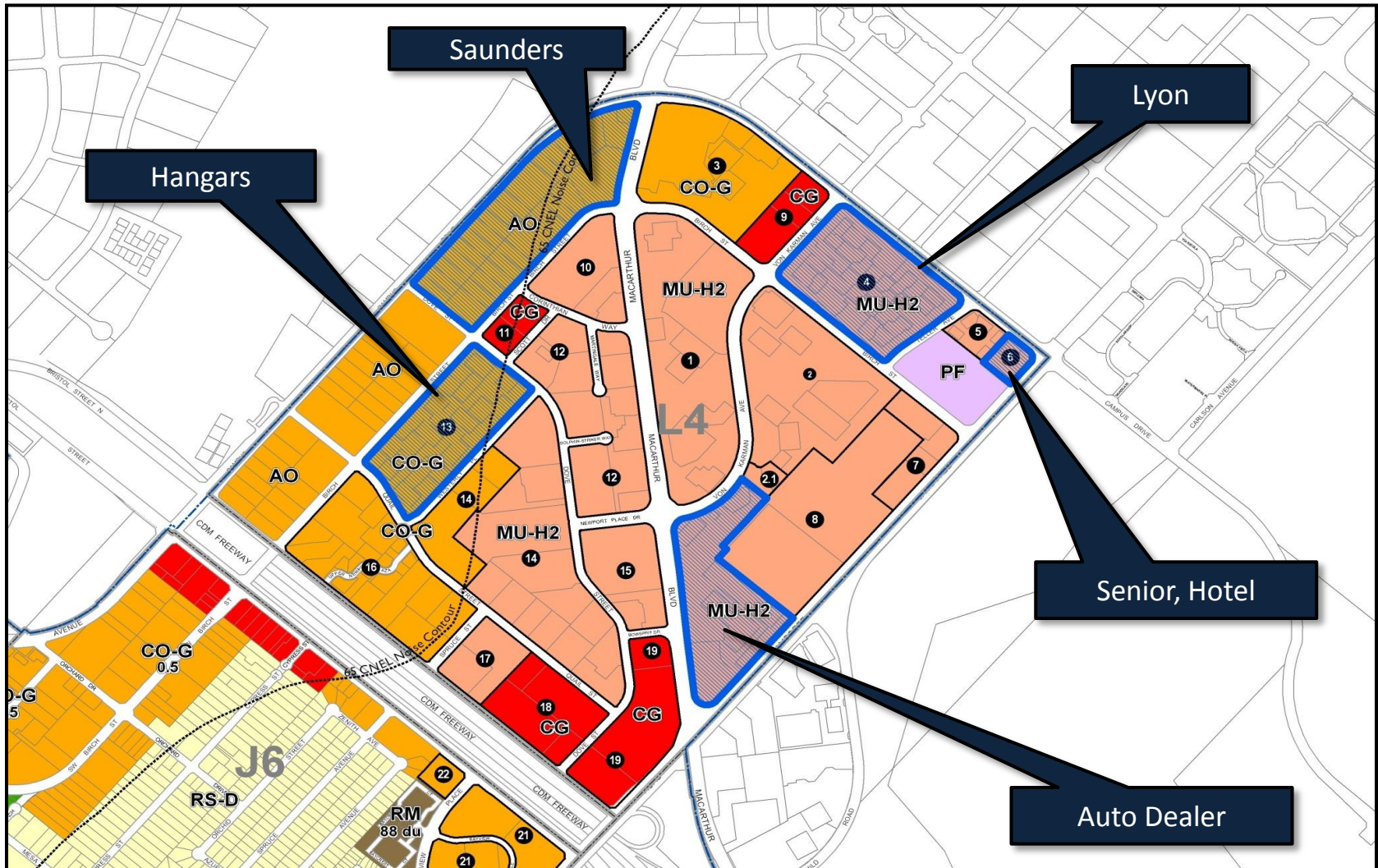
Lido Village





To Be Resolved

Airport Area





To Be Resolved

Saunders Properties

Current: 575,00 sq ft.

Proposed: 1.2 million sq ft. & 685 Apartments

Lyon Homes

Current: 1,650 replacement du's

550 Additive du's

Proposed: 2,350 replacement du's

UAP Companies

Current: 46,044sq ft. commercial

Proposed: Allow congregate care, hotel with more floor area (trip neutral)

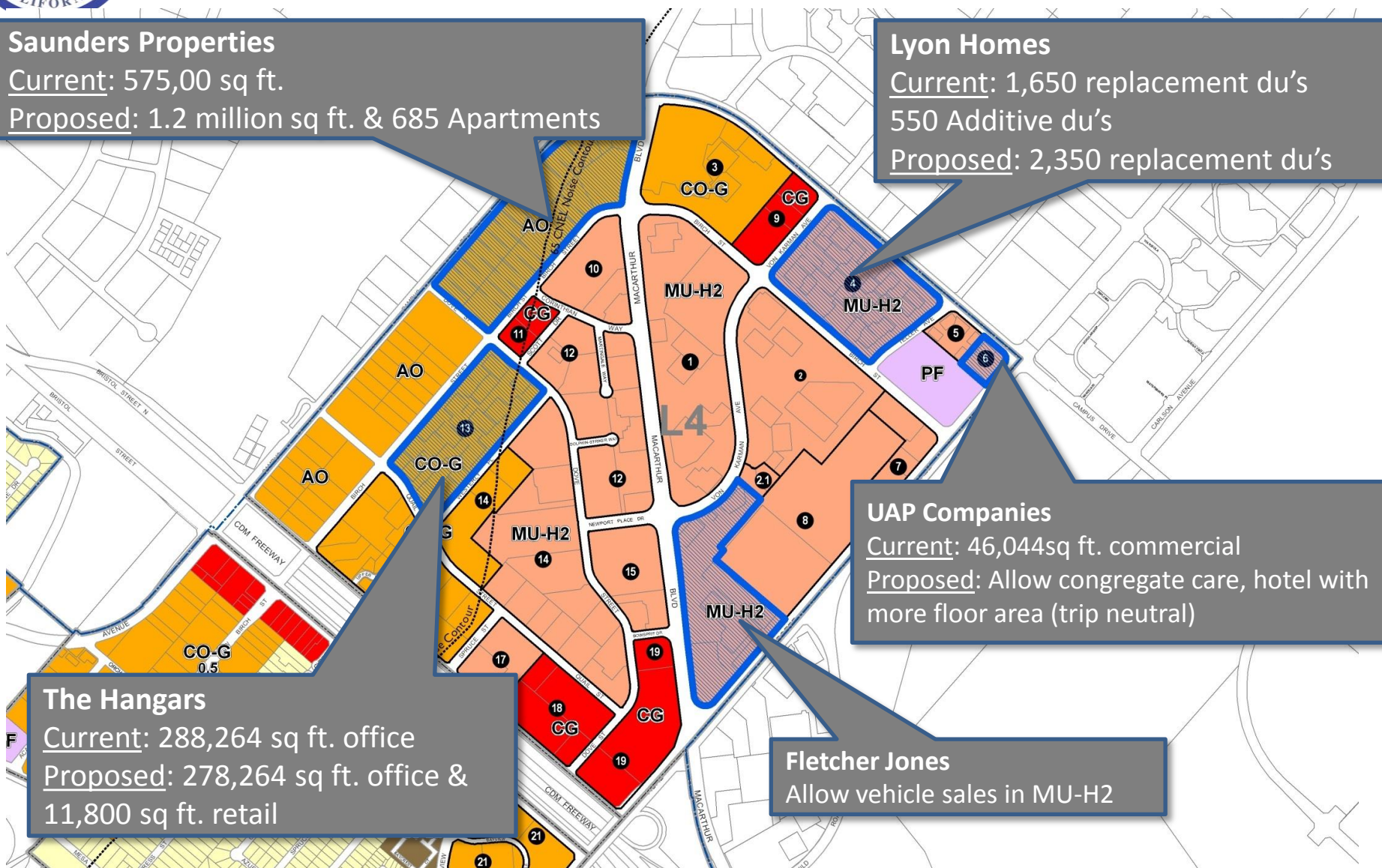
The Hangars

Current: 288,264 sq ft. office

Proposed: 278,264 sq ft. office & 11,800 sq ft. retail

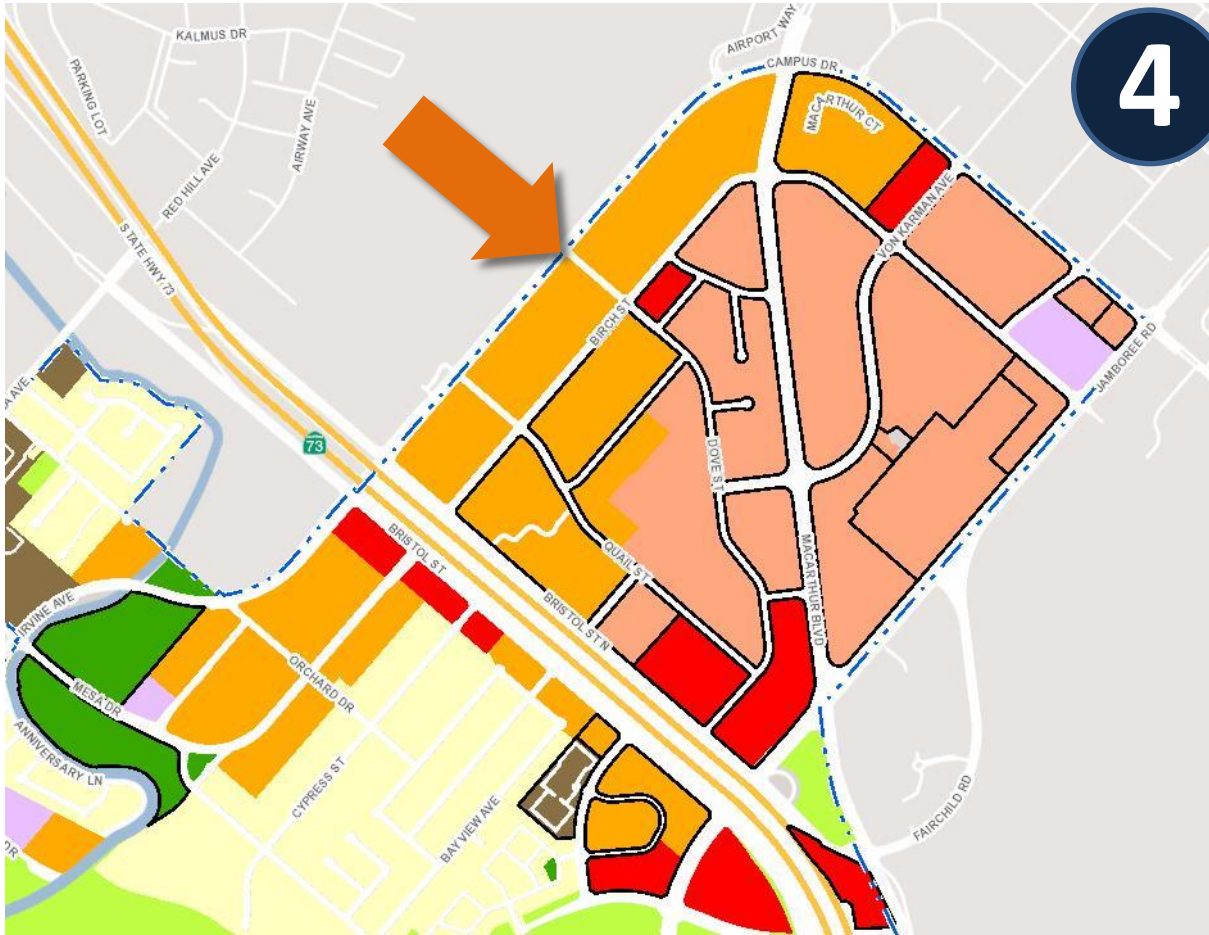
Fletcher Jones

Allow vehicle sales in MU-H2





To Be Resolved



Airport Area Issues:

1. Should additional replacement housing units be permitted, while maintaining trip neutrality? (GP: 2,200 maximum)
2. Should additional trips be permitted to facilitate new projects?
3. Should separate planning study be conducted in future to address second question?



To Be Resolved

- Lower Castaways: Land use designation, capacity
- Other Irvine Company property capacity modifications
- Policy revisions to reflect legislation, best practices, and City staff review



Next Steps

- **October 1:** LUEAC Meeting to Finalize Land Use Recommendations for CEQA Review
- **October-February:** Prepare Draft Supplemental Environmental Impact Report
- **November-January:** LUEAC Meetings for Recommended LUE Goal and Policy Revisions



Discussion

Planning Commission
Briefing
September 24, 2013

CHAPTER 3 **Land Use Element**

